No. __-_____

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IN THE

Supreme Court of the United States

FOKKER SERVICES B.V.,

Petitioner,

—v.—

NORTHROP GRUMMAN CORPORATION and
TELEFLEX CONTROL SYSTEMS, INCORPORATED,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, consistent with the Court's holding in *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925), it is a violation of constitutional due process to hold a Netherlands parent corporation subject to the general jurisdiction of a California state court based upon the contacts of its U.S. subsidiary with the forum, where the business conducted by the U.S. subsidiary in the forum was its own business, and not the parent's business; where the parent and subsidiary operated as genuinely separate legal entities; and where the Netherlands parent had virtually no contacts with California?

PARTIES TO THE PROCEEDING

The following persons and entities were parties before the California Supreme Court:

1. Petitioner Fokker Services B.V.
2. Respondents Northrop Grumman Corp. and Teleflex Control Systems, Inc.; and
3. The Superior Court of State of California, County of Orange, which was a technical party before the California Supreme Court.

CORPORATE AFFILIATIONS

FOKKER SERVICES B.V. is a corporation organized under the laws of the Kingdom of the Netherlands.

FOKKER SERVICES B.V. is wholly owned by STORK N.V., a corporation also organized under the laws of the Kingdom of the Netherlands.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Fokker Services B.V. respectfully requests that a writ of certiorari issue to review the order of the California Supreme Court summarily denying review (Order, Appendix at 1a-3a)[1] of the summary denial of review by the California Court of Appeal, Fourth Judicial District (Order, App. 4a) of the opinion and order of the California Superior Court, County of Orange (Opinion and Order, App. 5a-17a).

OPINION AND ORDERS IN THE CASE

The order and modified order of the Supreme Court of California denying review appear in the Appendix to the petition at 1a-3a. This decision has not been officially reported.[2]

The order of the Court of Appeal denying review of the opinion and order of the California Superior Court appears in the Appendix to the petition at 4a. This decision has not been officially reported.

The opinion and order of the Superior Court of the State of California, County of Orange, appears in the Appendix to the petition at 5a-17a. This decision has not been officially reported.

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[1] References to the Appendix are indicated as "App. ___ a."

[2] The Order of the Supreme Court of California of June 2, 2000 was modified to include the Court of Appeal case number for the Fokker Services B.V. petition to the Supreme Court of California (Case No. G026674), which was inadvertently omitted from the June 2, 2000 Order. Order, App. 1a-2a.

STATEMENT OF JURISDICTION

The order of the Supreme Court of California was entered on June 2, 2000, and this petition has been filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, § 1.

Section 410.10 of the California Code of Civil Procedure provides:

> A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

Cal. Civ. Proc. Code § 410.10 (West 1973).

STATEMENT OF THE CASE

Procedural History

This action arises out of the October 21, 1996 crash of an aircraft operated by Transportes Aeros Regionais S.A. [TAM], a domestic Brazilian airline, en route from Sao Paolo to Rio de Janeiro, Brazil. Complaint, App. 18a-28a.

On September 9, 1997, plaintiffs brought a wrongful death action, individually and as representatives of a deceased passenger, David Andrews, in the Orange County Superior Court of the State of California. The defendants sued were Northrop Grumman Corporation [Northrop Grumman] and Teleflex Control Systems, Incorporated [Teleflex]. The causes of action against these defendants were grounded in negligence and strict products liability, and arose in Brazil where the accident occurred. Complaint, App.18a, 20a.

On January 6, 1999, Northrop Grumman cross-claimed for contribution, indemnity and declaratory relief against a number of cross-defendants,[3] including petitioner and its wholly-owned subsidiary, Fokker Services, Inc. [FSI], and TAM, the operator of the aircraft. Northrop Grumman Cross-Complaint, App. 29a-36a.

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[3] The named cross defendants were: Fokker Aviation B.V.; Fokker Aerostructures B.V.; Fokker Defense Marketing; Fokker Elmo B.V.; Fokker Elmo, Inc.; Fokker Services B.V.; Fokker Services, Inc.; Fokker Space B.V.; Fokker Space, Inc.; Fokker Special Products B.V.; N.V. Koninklijke Nederlandse Vliegtuigenfabriek Fokker; Fokker Aircraft, B.V.; Fokker Aircraft U.S.A., Inc.; R.J. Graaf Schimmelpenninck, as trustee-in-bankruptcy of N.V. Koninklijke Nederlandse Vliegtuigenfabriek Fokker a/k/a Fokker Aircraft B.V.; A.L. Leuftink, A.A.M. Deterink and Rutger G. Schimmelpenninck, as trustees-in-bankruptcy of Fokker Aircraft B.V.; TAM Transportes Aeros Meridionais, S.A. d/b/a TAM Airlines; and Roes 1-150, inclusive. On June 14, 1999, Teleflex filed a similar cross-complaint against the same cross-defendants seeking indemnity and contribution.

Following receipt of service of process, each of the Fokker cross-defendants then moved to quash service of summons of the cross-complaints for lack of *in personam* jurisdiction. The superior court, by order, permitted discovery about the business of the Fokker cross-defendants in California and their interrelationships to determine *in personam* jurisdiction.

On January 12, 2000, the superior court denied petitioner's motion to quash for lack of *in personam* jurisdiction. Opinion and Order, App. 5a-17a. In denying petitioner's motion, the superior court held, first, that, consistent with due process and the California long-arm statute, Cal. Civ. Proc. Code § 410.10 (West 1973), the California contacts of FSI are sufficient to give the California court general jurisdiction over FSI. The court then held that because FSI is an "agent" of petitioner, the parent corporation of FSI, the contacts of FSI can be imputed to Fokker Services B.V. to obtain general *in personam* jurisdiction over Fokker Services B.V.

The superior court did not find that the "corporate veil" between FSI and Fokker Services B.V. should be pierced or that FSI was the "alter ego" of Fokker Services B.V.

The superior court ruled:

> That left Fokker Services B.V., and while it's true part of a subsidiary relationship is not enough by itself to give California courts jurisdiction over a parent; however, the closeness of the economic nexus between a parent and subsidiary should be examined, **but if it appears that the subsidiary is the agent of the parent, it may be subject to personal jurisdiction in the California courts**.
>
> **Here, there's no dispute that Fokker Services, Inc. is an agent of its parent Fokker Services B.V.**

> **The agent has ongoing contacts with California, which may sufficiently impose jurisdiction in California.** And whether or not there's a sufficient basis for liability based on the acts of the agency is a question of fact, not a jurisdictional issue. Deny as to Fokker Services B.V. as well.

See Opinion and Order, App. 16a-17a (emphasis added).[4]

On January 24, 2000, in response to the superior court's ruling, Fokker Services B.V. filed a petition for writ of mandate or, alternatively, prohibition, seeking review by the California Court of Appeal of the superior court's order. On April 27, 2000, the California Court of Appeal denied the petition, without opinion. App. 4a. Fokker Services B.V. timely filed a petition for review and requested an immediate stay from the Supreme Court of California. On June 2, 2000, the Supreme Court of California denied Fokker Services B.V.'s application for stay and petition for review. App. 3a.

Statement of Facts

The essential facts in this case are not in dispute. The underlying cause of action is based upon an aircraft accident in Brazil and arises out of alleged design and manufacturing defects in the aircraft manufactured in the Netherlands in 1994 by Fokker Aircraft B.V., bankrupt since 1996, and related defects of the Northrop Grumman thrust reverser. Fokker Aircraft B.V. was dismissed from the action without prejudice to cross-complainants' right to proceed with the action they brought in the Netherlands against the Trustees of Fokker Aircraft B.V.,

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[4] Most recently, cross-complainant Teleflex is seeking to use the subsidiary-agency finding by the trial court to compel FSI to produce documents of petitioner Fokker Services B.V. located in the Netherlands, documents wholly unrelated to the business of FSI and not within FSI's possession or control in Atlanta.

which is being defended in the Netherlands by Fokker Aircraft B.V.'s insurers. App. 83a-87a.

The causes of action claimed in both the complaint and cross-complaint did not arise in California or from any act or transaction by any of the Fokker cross-defendants in California. App. 18a-36a.

Fokker Services B.V. is a Netherlands corporation created on February 23, 1996. Its principal place of business is the Netherlands. It was created to service Fokker type aircraft still operating after Fokker Aircraft B.V. went bankrupt. App. 78a-82a.

The business of Fokker Services B.V. is maintenance, repair, overhaul and modifications to Fokker type aircraft, as well as the aircraft of other manufacturers. Fokker Services B.V. is comprised of 4 divisions: (1) Aircraft Maintenance; (2) Component Repair and Maintenance; (3) Parts Supply; and (4) Technical Support Services. App. 80a, 88a-93a. The Parts Supply Division supplies aircraft parts to parts suppliers and operators of Fokker type aircraft throughout the world and to FSI which sells them to customers based in North America. App. 88a, 91a.

FSI, the wholly-owned U.S. subsidiary of Fokker Services B.V., was incorporated in 1996 under the laws of the State of Virginia with its principal place of business in Atlanta, Georgia. App. 54a.

The relationship between Fokker Services B.V. and FSI is governed by a Business Agreement, and FSI is to be the "sales and logistical center for North America." App. 40a. FSI sells spare parts in North America to customers operating Fokker type aircraft. App. 45a, 55a.

In the trial court, general *in personam* jurisdiction over FSI was based principally on FSI's sales (approximately 5%, App. 11a) to approximately thirty different

California customers from its base in Atlanta since 1996, and long-distance telephone calls by FSI to California (20.46% of total FSI calls in 1996). The court found that an agency relationship exists between FSI and Fokker Services B.V. and, on that basis, held that FSI's contacts with California could be imputed to petitioner. The court did not delineate the nature or scope of the agency relationship.

The presumptive factors relied upon by the superior court to find that FSI acts as Fokker Services B.V.'s agent in California were: that FSI was selling and marketing some of the Fokker Services B.V. products and services in California from its Atlanta, Georgia base of operations; that a Business Agreement in force between Fokker Services B.V. and FSI refers to FSI as a "sales agent" (App. 44a, 54a); and the assistance rendered by Fokker Services B.V. to FSI to facilitate FSI's sales to FSI's customers.

Under the Business Agreement, FSI sells aircraft parts, products and services to Fokker type aircraft customers in North America from its sales and logistical center in Atlanta. FSI does so for its own account. App. 48a-49a, 59a. The Agreement specifically provides that it does not "confer authority upon FSI to act on behalf of Fokker [Services B.V.] or to bind or commit Fokker [Services B.V.] to any third party in any way." App. 46a, 56a.

The Business Agreement deals with "FSI business covered by this Agreement;" contracts are "concluded by FSI with customers." App. 47a, 48a; 57a, 58a. Title of the "aircraft spare parts are to be transferred from Fokker [Services B.V.] to FSI and from FSI to its customer." App. 51a, 62a.

According to the Agreement, "[e]ach of the parties hereto [Fokker Services B.V. and FSI] shall act as an independent legal entity and not as an agent for, partner of or joint venture with the other Party thereto". App. 52a, 62a.

Neither FSI nor Fokker Services B.V. have ever had an office, plant, service center or other location in California, and neither FSI nor Fokker Services B.V. ever had employees based there. App. 78a-83a. FSI and Fokker Services B.V. are separate legal entities. Neither corporate entity has the authority to act on behalf of the other or bind the other with regard to the products and services provided by FSI or Fokker Services B.V. App. 48a-49a, 52a; 59a, 62a; 64a-73a; 74a-77a.

FSI sells parts and supplies pursuant to FSI's contracts with its customers. If a customer of FSI requires a part that is not available in Atlanta, FSI will contact the service desk of Fokker Services B.V. in the Netherlands to determine if it is available there. If urgent, the part is then shipped by Fokker Services B.V. to the FSI customer and invoiced through FSI. In other words, Fokker Services B.V. sends the invoice to FSI and charges FSI for the part and FSI charges the customer. The same procedure also is followed if engineers or mechanics or technical staff of FSI have to be dispatched to an aircraft to perform a service. App. 64a-73a; 74a-77a.

REASONS FOR GRANTING THE WRIT

I

THE DECISION OF THE SUPERIOR COURT CONFLICTS WITH DECISIONS OF U.S. CIRCUIT COURTS OF APPEALS, DECISIONS OF STATE COURTS OF LAST RESORT AND THE DECISIONS OF THE COURT IN *CANNON MFG. CO. V. CUDAHY PACKING CO.*, 267 U.S. 333 (1925) AND *HELICOPTEROS NACIONALES DE COLOMBIA, S.A. V. HALL*, 466 U.S. 408 (1984)

A. Certiorari Should Be Granted in this Case to Resolve the Due Process Issue of General *In Personam* Jurisdiction Over A Parent Corporation Based Upon The Contacts Of Its Wholly Owned Subsidiary.

The Court in *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333 (1925), in an opinion authored by Justice Brandeis, held that a court could not obtain jurisdiction over a parent corporation merely because it had jurisdiction over its wholly owned and controlled subsidiary.

After *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), was decided, courts in the United States, both federal and state, have been uncertain about whether *Cannon* has been effectively overruled by *International Shoe*.[5] As a result, courts have rendered wide

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[5] *See Energy Reserves Group, Inc. v. Superior Oil Co.*, 460 F. Supp. 483, 510 (D. Kan. 1978) (while the court held that *International Shoe* undermined most of the holding in *Cannon*, the district court recognized that "*Cannon* properly supports the proposition that jurisdiction over a domestic subsidiary does not produce jurisdiction over the non-resident parent, absent an agency or alter ego relationship"); *see also In re Telectronics Pacing Systems, Inc.*, 953 F. Supp. 909 (S.D. Ohio 1997); *Empire Steel Corp. of Texas v. Superior Court of Los Angeles*, 366 P.2d 502 (Cal.1961) (*en banc*).

ranging and disparate opinions on the issue of general jurisdiction over a non-resident parent corporation based upon contacts of a wholly-owned subsidiary in the forum. It can be said fairly that no issue of jurisdiction in the courts today is more unsettled and no jurisdictional issue has produced so many diverse and contradictory decisions than the issue at bar. *See* List of reported jurisdictional cases at App. 94a-97a.

Legal writers have lamented that the issue of when and under what circumstances a parent can be subject to the jurisdiction based on the contacts of its wholly owned subsidiary with the forum requires resolution by the Court. *See* Lea Brilmayer and Kathleen Paisley, *Personal Jurisdiction and Substantive Legal Relations: Corporations, Conspiracies and Agency*, 74 Cal. L. Rev. 1 (1986);[6] Daniel G. Brown, *Jurisdiction over a Corporation on the Basis of the Contacts of an Affiliated Corporation: Do You have to Pierce the Corporate Veil?*, 61 U. Cin. L. Rev. 595 (1992);[7] *see also* Murray E.

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[6] Professor Brilmayer and Ms. Paisley wrote:

> The Supreme Court has yet to consider explicitly the effect of the 'fair play and substantial justice' standard on Cannon-type problems. The lower courts are understandably confused about how the two lines of cases [*International Shoe* and *Cannon*] fit together.

74 Cal. L. Rev. at 4.

> * * * *
>
> We commence discussion of this common analytical pattern [parent-subsidiary, corporation and franchise dealer] by considering the specific example of jurisdiction based upon the parent-subsidiary relationship between two corporations. It is the clearest example to visualize, and the large number of lower court cases raising the question suggests that it is also the example of greatest current importance.

Id. at 7.

[7] Mr. Brown wrote:

> The confusion in the courts is understandable. A single court has sometimes reached different conclusions on the issue in cases

Knudsen, *Jurisdiction over a Corporation Based on the Contacts of a Related Corporation: Time For a Rule of Attribution*, 92 Dick. L. Rev. 917 (1988).

The issue Fokker Services B.V. brings to the Court has arisen in both specific jurisdiction and general jurisdiction cases. Courts have found jurisdiction over a parent through its subsidiary's contacts with the forum in a variety of ways: the parent controlled the subsidiary; the subsidiary acted as "a mere department of the parent;" the subsidiary was an alter ego or a sham so that the corporate veil should be pierced; or, as involved in this case, the subsidiary was the agent (or "instrumentality") of the parent.

The agency issue in this case does not invoke specific jurisdiction. Fokker Services B.V. would not dispute, and it was never at issue, that under the jurisprudence laid down by the Court, if FSI's solicitations and sales in California caused an injury in California, FSI would be subject to specific *in personam* jurisdiction in California because the solicitation and sale in California gave rise to the cause of action. *See, e.g.*, *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). *Accord Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984). If the product involved was a principal's product and the agent sold the product in California and a defect in the product gave rise to the cause of action in California, the principal *might*, under the Court's holdings, be subject to the specific *in personam* jurisdiction of the California court.

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falling within months of each other. The United States Supreme Court has not recently addressed the validity of Cannon or the effect of International Shoe on the Cannon doctrine. In light of the confusion among the courts concerning the authority of states to exercise jurisdiction over corporations on the basis of the activities of affiliated corporations, the United States Supreme Court should resolve the issue.

61 U. Cin. L. Rev. at 618 (citations omitted).

Specific jurisdiction, however, is not the issue in the case at bar. The cause of action did not arise from any act or imputed act of FSI or Fokker Services B.V. in California, and the TAM crash occurred in Brazil, not California.

This case involves general jurisdiction over the parent based upon a finding of an agency relationship with its subsidiary. The issue in this case is whether the "agency" found by the superior court satisfies due process to permit the subsidiary's contacts (FSI's contacts) with California to be imputed to its parent (petitioner Fokker Services B.V.) and, if so, whether any of those imputed contacts, along with any other independent contacts of petitioner with California, are sufficient to establish general jurisdiction over petitioner in California, consistent with *Helicopteros*.

The first inquiry is the nature and scope of the "agency" which permits the contacts of the subsidiary to be imputed to the parent and the starting point has been the *Cannon* decision. It is appropriate for the Court to resolve the proper application of *Cannon* and the Due Process Clause in this case.

B. Consistent with *Cannon*, a Subsidiary's Contacts with the Forum Can Be Imputed to the Parent Based Upon an Agency Relationship Only Where the Subsidiary's Acts Became the Acts of the Parent and the Subsidiary Is Doing the Business of the Parent in the Forum, Not Its Own Business.

As mentioned above, most of the conflicting decisions by federal and state courts stem from a well documented difference of opinion as to whether *Cannon*, in light of *International Shoe*, has been effectively overruled.

It is petitioner's position that the *Cannon* jurisprudence is as sound today as it was 75 years ago on the

issue of when a court can obtain general *in personam* jurisdiction over a parent based on the contacts of its wholly owned subsidiary. Although the terminology used in *Cannon* was "presence," not general jurisdiction, the concept of presence reflects the kind of continuous and systematic general business contacts required today for the assertion of general jurisdiction. *See Helicopteros, supra.*

In *Cannon*, essentially a general jurisdiction case, plaintiff brought suit in North Carolina against a Maine corporation for breach of contract. Plaintiff sought to obtain jurisdiction over the Maine corporation, which had no contact with North Carolina, through its Alabama subsidiary. Plaintiff argued that jurisdiction could be maintained over the Maine corporation by virtue of "identity pro hac vice between the defendant [the Maine corporation] and the Alabama corporation." *Cannon*, 267 U.S. at 335. The Maine corporation owned all of the stock of the Alabama subsidiary and exercised complete financial and commercial control over the subsidiary. There also was no dispute that the Alabama subsidiary was doing business in North Carolina.

The Court held in *Cannon* that the separate legal identity of parent and subsidiary, if carefully maintained, cannot be ignored, and that simply because a subsidiary is doing business and subject to personal jurisdiction in the forum state, the parent is not automatically subject to the jurisdiction of the forum court. *Id.* at 336. In *Cannon*, the Court upheld the right of a parent corporation to conduct business in a state *through the use of a subsidiary* without subjecting itself to jurisdiction. The Court stated:

> The defendant [parent] wanted to have business transactions with persons resident in North Carolina, but for reasons satisfactory to itself, did not choose

> to enter the state in its corporate capacity. It might have conducted such business through an independent agency without subjecting itself to the jurisdiction. It preferred to employ a subsidiary corporation.

Id. at 337 (citations omitted).

The Court recognized that even though the parent "controlled" the subsidiary, the parent was not subject to general jurisdiction simply because its wholly owned subsidiary was present in the forum. Said the Court:

> In the case at bar, the identity of interest may have been more complete, and the exercise of control over the subsidiary more intimate, than in the three cases cited [by the Court], but that fact has, in the absence of an applicable statute, no legal significance. The corporate separation, though perhaps merely formal, was real.

Id. at 336-37.

The Court held that it is not enough that a parent creates a subsidiary in order to market the parent's products. A subsidiary is not an agent for jurisdiction purposes when it buys from the parent [as FSI did in the case at bar] and sells the product to its customers. The Court concluded:

> The Alabama corporation, which has an office in North Carolina, is the instrumentality employed to market Cudahy products within the state; but it does not do so as defendant's agent. It buys from the defendant [the Maine Corporation] and sells to dealers. In fulfillment of such contracts to sell, goods packed by the defendant [the Maine Corporation] in Iowa are shipped direct to dealers; and from them the Alabama corporation collects the purchase price.
>
> * * *

> [W]e cannot say that, for purposes of jurisdiction, the business of the Alabama corporation in North Carolina became the business of the defendant [parent Maine corporation].

Id. at 335, 338.

The requisite agency relationship for general jurisdiction purposes, according to *Cannon*, is that the subsidiary as agent is doing the parent's business, not its own. A subsidiary's "agency" contacts for *in personam* jurisdiction purposes can be those *only* of a common law agency, whereby the parent may be held *liable* for the acts of the subsidiary agent because, the acts of the subsidiary are deemed to be the acts and the business of the parent. *See Cannon*, 267 U.S. at 337.

Despite the 75 years that have passed since *Cannon*, what is striking, factually, is that the corporate structure of Stork N.V. and Fokker Services B.V. (parent and subsidiary Netherlands corporations), and the employment by Fokker Services B.V. of subsidiaries to conduct its business worldwide reflect essentially the same structure used by the defendant corporation in *Cannon*.

As the Court presciently recognized in *Cannon*, foreign and domestic corporations regularly form subsidiaries in various parts of the United States to function as separate business entities, amply capitalized and staffed to deal with local business-related disputes and to market and sell product lines for the legitimate purpose of shielding a parent corporation from the expense of litigation in every state or nation where it has located a subsidiary.

Stork N.V., a Netherlands corporation that wholly owns Fokker Services B.V., carefully established a structure for its Fokker Group of Companies, not unlike the structure most major corporations have in place in the

United States and around the world for conducting business.

Notwithstanding the fact that corporations conduct their world-wide business through bona fide corporate subsidiaries which are not as a matter of law "agents" of the parent, the superior court, ignoring domestic and international economic business realities and the principles of *Cannon*, found that FSI's contacts with California can be imputed to its parent (Fokker Services B.V.) because of a mistaken concept of agency. The decision of the superior court is in conflict not only with *Cannon*, but also with decisions of other courts in this country and abroad. *See, e.g., Salomon v. A Salomon & Co. Ltd.* (H.L.) [1897] A.C. 22, [1895-9] All ER Rep. 33; *Yukong Lines Ltd of Korea v. Rendsburg Invest. Corp. & Others, (The 'Rialto') (No. 2),* (QBD (Comm. Ct)), [1998] 4 All E.R. 82, 1997 WL 1102970; *Atlas Maritime Co. S.A. v. Avalon Maritime Ltd,* (CA), [1991] 4 All E.R. 769,1991 WL 837902; *Adams v. Cape Indus. Plc,* (CA), [1990] Ch. 433 [1990] 2 W.L.R. 657 [1991] 1 All E.R. 929, 1989 WL 651250.

C. The Decision of the Superior Court Conflicts with Decisions of the Court, U.S. Circuit Courts of Appeals and State Supreme Courts.

The decision of the superior court in this case conflicts with decisions of the Court, decisions of U.S. Circuit Courts of Appeals and decisions of State Supreme Courts that have upheld the separateness of subsidiary and parent corporate entities and have refused to impute the contacts of a subsidiary to its parent unless the subsidiary was the "alter ego" of the parent (not found in the case at bar) or unless the subsidiary, acting as the agent on behalf of the parent, was doing the business of the parent (also not the corporate relationship in the case at bar).

The Court in *Cannon* covered all the significant points to guide courts in dealing with the issue of jurisdiction over a parent corporation based on a subsidiary's contacts with the forum. The last line of *Cannon* captures the most significant point: "We cannot say that, for purposes of jurisdiction, the business of the Alabama Corporation in North Carolina became the business of the defendant [the parent]." *Cannon*, 267 U.S. at 338.

Unless the subsidiary is a sham, or an alter ego, their separate legal identities and their separate lines of business should be honored by the lower courts. If a subsidiary is acting for its parent corporation as agent and doing the parent's business, the parent may be doing business in the forum and subject to the jurisdiction of the forum. For example, where the subsidiary acts as a general agent for the parent in the jurisdiction, general jurisdiction over the parent for those acts has properly been held to exist. This is what a general agent does. He acts for his principal in the jurisdiction. *See Chan v. Society Expeditions, Inc.*, 39 F. 3d 1398, 1404 (9th Cir. 1994), *cert. denied*, 514 U.S. 1004 (1995); *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406 (9th Cir. 1977). There was no such finding in this case.

One of the Court's guiding constitutional principles on jurisdiction over non-resident corporations has been that "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). If a subsidiary is a different entity from its parent (as *Cannon* recognized) and the contacts of the subsidiary are related to its business, the subsidiary's "conduct or connection with the forum" cannot be imputed to the parent.

Similarly, the Court has often stated that "to the extent that a corporation exercises the privilege of conducting

activities within a state, it enjoys the benefits and protection of the laws of that state" and it is not unjust to require the corporation to respond to suits arising out of those activities. *International Shoe*, 326 U.S. at 319.

Where, however, as here, the parent creates a subsidiary that has some contact with the forum, and the subsidiary is a true, separate entity, not a sham, it cannot be said that the parent "enjoys the benefits and protection of the laws of that state." On the contrary, under such a structure, the parent has carefully sought to avoid contact with the state.

In conflict with the summary ruling of the superior court in this case, several courts that have addressed the agency rationale have required that a common law agency exist between parent and subsidiary, whereby the subsidiary acts in the forum on behalf of the parent or for its account. For example, the Ninth Circuit in *Wells Fargo* described the agency rationale as follows:

> While the mere existence of a parent-subsidiary relationship has been held in itself to constitute insufficient evidence of control so as to subject the parent to service for the acts of the subsidiary under the agency rationale, if a common law agency is found to exist, the parent may properly be served.

556 F.2d at 420 (citations omitted).

In *Dickson Marine Inc. v. Panalpina, Inc.*, 179 F.3d 331 (5th Cir. 1999), the Fifth Circuit described the agency rationale (under the facts of the case) as the "actual or apparent authority to bind" the parent. 179 F.3d at 338. In *Kuenzle v. HTM Sport-Und Freizeitgerate AG*, 102 F.3d 453 (10th Cir. 1996), which involved an independent distributor present in the forum, the court found that the foreign manufacturer was not subject to the general jurisdiction of the court on an agency

rationale because the distributor was not authorized to act on the foreign manufacturer's behalf. In *Hutchinson v. Chase & Gilbert, Inc.* 45 F.2d 139 (2d Cir. 1930), cited by the Court in *International Shoe*, the court (per L. Hand, J.) noted that the activities of a subsidiary in that case were not enough to establish jurisdiction over the parent; the subsidiary must "be engaged in the affairs of the parent." 45 F.2d at 141.

In *Peterson v. U-Haul Co.*, 409 F.2d 1174 (8th Cir.), *judgment modified*, 421 F.2d 837 (8th Cir. 1969), the presence of a rental company for U-Haul vehicles in the forum was insufficient to subject the separate, affiliated U-Haul Company of North Carolina to general jurisdiction. The court stated:

> We seriously doubt whether a common hallmark and concentrated control, in and of itself, is sufficient to treat the entire U-Haul Rental System as one unit for the basis of jurisdiction, where separately maintained and operated corporations that apparently have a practical business purpose each perform within limited areas and participate in different phases of the System's operations. To pierce the corporate veil it must be shown that the various corporate entities are a sham or a fraud or the system is a subterfuge set up to escape legal liability.

Peterson, 409 F.2d at 1185.

In *Harris v. Deere & Co.*, 223 F.2d 161 (4th Cir. 1955), the court reasoned:

> [I]t cannot be said that a corporation is doing business within a state merely because a wholly owned and controlled subsidiary is selling its [the parent's] product there, if the separate corporate entities are observed and the subsidiary has purchased the

> goods which it is selling and is not selling them as agent of the manufacturer.

Id. at 163.

Consolidated Dev. Corp. v. Sherritt, Inc., 216 F.3d 1286 (11th Cir. 2000), is similar to the case at bar. The subsidiary was marketing the parent's products in the United States. Following *Cannon*, the court said:

> It is well established that as long as a parent and a subsidiary are separate and distinct corporate entities, the presence of one in a forum state may not be attributed to the other. [citations omitted] Generally, a foreign parent corporation is not subject to the jurisdiction of a forum state merely because a subsidiary is doing business there. Where the "subsidiary's presence in the state is primarily for the purpose of carrying out its own business and the subsidiary has preserved some semblance of independence from the parent, jurisdiction over the parent may not be acquired on the basis of the activities of the subsidiary." (citations omitted) For *Consolidated* to persuade us that the district court had general personal jurisdiction over Viridian [the parent] because of VFI's [the subsidiary's] activities in the United States, it would have to show that VFI's corporate existence was simply a formality, and that it was merely Viridian's agent.

Id. at 1293.

The Seventh Circuit in *IDS Life Ins. Co. v. SunAmerica Life Ins. Co.*, 136 F.3d 537 (7th Cir. 1998) noted: "If the subsidiary were acting as SunAmerica's Illinois agent in the sense of conducting SunAmerica's business rather than their own business, the parent could be sued." *Id.* at 541. *See also Transure, Inc. v. Marsh & McLennan, Inc.*, 766 F.2d 1297, 1299-1300 (9th Cir. 1985) (evidence that subsidiary was acting "on behalf

of" parent was lacking in the record); *Insolia v. Philip Morris Inc.*, 31 F. Supp. 2d 660 (W.D. Wis. 1998) (finding that parent-subsidiary relationship is insufficient in itself to establish principal-agent relationship; it must be shown that the subsidiary was acting on the parent's account).

In *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370 (5th Cir. 1987), the court held that Beech was not subject to general jurisdiction on the basis of sales by its dealers of Beech products valued at over $250 million dollars during its nationwide marketing campaign. The court stated:

> Beech exercised its right to structure its affairs in a manner calculated to shield it from the general jurisdiction of the courts of other states such as Texas, carefully requiring the negotiation, completion, and performance of all contracts in Kansas. Beech has not afforded itself the benefits and protections of the laws of Texas, but instead has calculatedly avoided them.

Bearry, 818 F.2d at 375-76. "[D]istributors selling Beech manufactured products for their own account do not create minimum contacts sufficient to warrant general jurisdiction over Beech." *Id.* at 376. *Accord Preussag A.G. v. Coleman*, 16 S.W.3d 110 (Tex. Ct. App. 2000).

Finally, the Court in *Consolidated Textile Corp.v. Gregory*, 289 U.S. 85 (1933), addressed the question of agency in the context of *Cannon*. In that case, Consolidated Selling Co. was the selling agent for its parent Consolidated Textile Corp., was present in the forum (Wisconsin) and sold goods in Wisconsin, apparently for the subsidiary's own account. The plaintiff had filed a statement claiming that Consolidated Selling was selling goods for its parent as an agent. The Court held: "The unimportance of the statement concerning acts of the controlled corporation—Consolidated Selling Com-

pany—is clear enough in light of what we said in *Cannon*." *Id.* at 88.

Veil piercing and alter ego rationales for finding jurisdiction over the parent for the acts of the subsidiary are different sides of the same principle—in order for a parent to be subject to jurisdiction for the acts of the subsidiary, the acts of the subsidiary must be the acts and the business of the parent. Veil piercing and alter ego theories simply reflect situations in which the subsidiary is present in name only.

State courts, including the highest court of the state where the present case was brought (*see Empire Steel Corp. v. Superior Court*, 366 P.2d 502 (Cal. 1961)), have followed *Cannon*. *See Conn v. ITT Aetna Fin. Co.*, 252 A.2d 184, 188 (R.I. 1969) (finding that "while there may be more recent holdings of other courts which appear contrary, *Cannon*, although a 'pre-minimum contacts' case, still continues in our judgement to represent the better view"); *Botwinick v. Credit Exch., Inc.*, 213 A.2d 349, 353 (Pa. 1965) (refusing to find jurisdiction over the parent absent a finding that the parent's domination and control rendered the subsidiary a mere instrumentality (or agent) of the parent); *see also Mitchell v. Airline Reservations, Inc.* 61 N.W.2d 496 (Wis. 1954).

At the other end of the spectrum are courts that have found the *Cannon* decision to be obsolete and have ignored the legal separateness of parent and subsidiary.[8] *See, e.g., Jazini v. Nissan Motor Co.*, 148 F.3d 181, 184 (2d Cir.1998); *Frummer v. Hilton Hotels Int'l, Inc.*, 227 N.E.2d 851 (N.Y.), *cert. denied*, 389 U.S. 923 (1967).

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[8] In an often cited and followed case, the Sixth Circuit implicitly rejected *Cannon* by automatically considering the parent's ownership of a subsidiary which does business with the forum as a contact imputable to the parent. *See Velandra v. Regie Nationale de Usines Renault*, 336 F.2d 292, 297 (6th Cir. 1964).

These New York-based decisions hold that a wholly owned subsidiary will be deemed to be the agent of the parent where it is shown that the subsidiary "does all the business which [the parent corporation] could do were it here by its own officials," *Jazini*, 148 F.3d at 184 (*quoting Frummer*, 227 N.E.2d at 854), or where the subsidiary is operating as a mere department of the parent.[9]

These formulations totally disregard *Cannon* and its holding that courts must give recognition to parents and subsidiaries that are properly maintained as separate legal entities. *See* Michael G. Albano, *Agency as a Means of Obtaining Jurisdiction in New York over Foreign Corporations: A Failed Theory*, 20 Brook. J. Int'l L. 169 (1993). If the *Frummer* principle were to prevail, it could be said that every parent is doing business in every forum where it has a subsidiary. *Frummer*, a well known precedent in New York courts, is plainly contrary to *Cannon*'s holding that corporations, separately maintained, cannot be merged for jurisdictional purposes.

Judge Breitel dissented in *Frummer* relying, *inter alia*, on *Cannon*. Judge Breitel recognized that the majority's espoused *Frummer* principle is contrary to custom and to the law applied in the U.S. and abroad. Citing materials about how similar issues are handled in the United King-

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[9] New York courts also have held that if the subsidiary functions as a department of the parent, *i.e.*, a mere division, the courts may ignore that the subsidiary is separately incorporated and find the parent subject to general jurisdiction by reason of the presence of the subsidiary in the forum. *See Freeman v. Gordon & Breach, Science Publishers, Inc.*, 398 F. Supp. 519, 522 (S.D.N.Y. 1975); *Public Adm'r of N.Y. v. Royal Bank of Can*, 224 N.E.2d 877, 879 (N.Y. 1967); *TACA Int'l Airlines S.A. v. Rolls-Royce of England, Ltd.*, 204 N.E.2d 329, 331 (N.Y. 1964); *Delagi v. Volkwagenwerk A.G.*, 278 N.E.2d 895, 897 (N.Y. 1972).

dom, Italy, Canada and the Netherlands, Judge Breitel wrote: "There is not the slightest suggestion in these materials that a formally separate foreign corporation could be brought before a foreign forum because of some intercorporate relationship, however intimate, with a local corporation." *Frummer*, 227 N.E.2d at 859.

The development by the Court of the "minimum contacts" principles under *International Shoe* does not render the *Cannon* principles obsolete where general jurisdiction is at issue. The Court in *Cannon* has upheld the right of non-resident corporations to structure their businesses through subsidiaries. Provided such subsidiaries are *bona fide* and maintained as separate entities, the parent should not be haled into court. For general jurisdiction to be found over the parent, *Cannon* and courts adhering to *Cannon* have required plaintiff to establish, and the trial court to find, justification for piercing the corporate veil or a general or common law agency such that the contacts of the subsidiary are the contacts of the parent.

In the record of the case at bar, it is clear that the superior court recognized that FSI and Fokker Services B.V. are separate, functioning business entities. The superior court did find significant that an "economic nexus existed between parent and subsidiary," but this is true of every parent-subsidiary relationship.

The superior court did not set forth any other basis for finding agency and did not pierce the corporate veil or find that FSI is a sham. Nevertheless, based on the proceedings as a whole, the most rational explanation for the superior court finding an agency relationship between Fokker Services B.V. and FSI is that FSI is referred to as a "sales agent" in their Business Agreement. A faithful reading of the Business Agreement makes clear that the label of FSI as "sales agent" of

Fokker Services B.V. does not negate that FSI is a separate corporation selling Fokker Services B.V.'s products for FSI's account. Selling Fokker Services B.V. spare parts to Fokker type aircraft customers in California is the business of FSI, not Fokker Services B.V. To illustrate, if FSI sold a defective product to a customer, the customer's contract remedy is against FSI.

The decisions addressing the issue of when the contacts of a subsidiary corporation should be imputed to a parent corporation on the basis of agency are in conflict and encourage forum shopping among the states and the circuits. Review by the Court is necessary to resolve the conflict and to prevent similar confusion in the future, which will also correct the manifest error in this case.

D. Even if the Contacts of FSI with California Could Be Attributed and Imputed to Fokker Services B.V., the Contacts Are Insufficient to Establish General Jurisdiction over Fokker Services B.V.

Based upon the California contacts of FSI, it is highly unlikely that general jurisdiction could properly be asserted over FSI in California. FSI's contacts with California consist of sales of component parts and a number of long distance telephone calls from Atlanta to FSI's California customers. In addition, FSI's marketing or solicitation in North America reached California. While there is specific jurisdiction when sales plus solicitation in a state give rise to a cause of action in that state, the Court has never held that sales and solicitation alone in a state create a basis for general jurisdiction. *See Helicopteros, supra. Cf. Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437 (1952) (defendant was present in Ohio through a president based in Ohio with an office there, contacts not present in this case).

While the Court has avoided the concept of presence as the *sine qua non* of general jurisdiction, it is an inescapable conclusion that *Perkins* and *Helicopteros* require continuous and systematic general business contacts with the forum, factors that are substantially equivalent to presence. Neither FSI nor Fokker Services B.V. are conducting the requisite continuous and systematic business with California. FSI was involved in sales to California purchasers from outside the state. There are no offices or employees of either company in the state. Orders are placed and products are shipped to California from Atlanta, or in extremely limited instances from the Netherlands. Neither FSI nor Fokker Services B.V. are required to pay taxes to California on their business. There are only a few other isolated contacts by FSI with California, and only *de minimus* contacts of Fokker Services B.V. with California.

Even if FSI's contacts with California could be imputed to Fokker Services B.V., the contacts are insufficient to impose general jurisdiction over Fokker Services B.V. The only potentially viable basis for jurisdiction over Fokker Services B.V. (based upon how it currently conducts its business) would be if a court were to be presented with some basis for assertion of specific jurisdiction.

Nevertheless, if the Court were to hold that sales alone are sufficient to find general jurisdiction, then the sales supporting the finding of general jurisdiction must necessarily be sales by Fokker Services B.V. Thus, the true meaning and application of FSI's agency status found by the superior court is important. Only if a court were to find that the corporate separation can be disregarded, that the sales of the subsidiary were in fact sales of Fokker Services B.V., could an expansion of the general jurisdiction principles of *Helicopteros* be considered at all. In this case, however, while FSI was named a "sales

agent" for Fokker Services B.V., the sales were FSI's sales. Thus, FSI's sales cannot be attributable under *Helicopteros* and *Perkins* to Fokker Services B.V.

The Court should resolve the issue as to what extent, if any, the sales of a subsidiary (and other contacts of the subsidiary and parent with the forum) can be attributed to the parent as continuous and systematic contacts with the forum. Petitioner submits that the standard of general jurisdiction in *Helicopteros*, and also in *Cannon*, does not contemplate that a foreign parent corporation (such as Fokker Services B.V. in this case) should reasonably anticipate being haled into a forum on a cause of action having nothing to do with the parent's business or the business of its "sales agent" subsidiary in the forum.

II

THIS CASE RAISES A RECURRING, IMPORTANT AND UNRESOLVED QUESTION INVOLVING THE CONSTITUTIONALLY PERMISSIBLE EXERCISE OF GENERAL *IN PERSONAM* JURISDICTION OVER FOREIGN CORPORATIONS THAT ENGAGE IN THE COMMON INTERNATIONAL PRACTICE OF ESTABLISHING SUBSIDIARIES IN THE UNITED STATES

The issue presented by the petition transcends the facts of this case and applies to all assertions of personal jurisdiction over a parent based on the business conducted by a subsidiary in the forum. In reported cases, federal district courts alone have considered this issue over 40 times since 1995. *See* App. 94a-97a. Examination of those cases reveals the degree of disarray regarding this frequently recurring due process issue. *See, e.g., Arch v. American Tobacco Co.*, 984 F. Supp. 830, 836 (E.D. Pa. 1997) (finding that "[t]he law is presently

unclear as to when a court may properly impute the contacts of a subsidiary to the parent corporation for the purpose of exercising personal jurisdiction over the parent"); *In re Telectronics Pacing Sys. Inc.*, 953 F. Supp. 909, 916 (S.D. Ohio 1997) (finding that much of the confusion stems from courts questioning the viability of *Cannon*).

This case is a proper vehicle to clarify an issue that has been recurring in both federal and state courts. It is an important issue of concern to foreign corporations with subsidiaries in the United States as well as U.S. corporations with subsidiaries here and abroad. Such corporations create subsidiaries to carry out their worldwide business and leave to their capitalized subsidiaries the handling of local activities, customers and problems, such as litigation arising out of the subsidiary's business. Parent corporations, like Stork N.V. and Fokker Services B.V., should not be subject to lawsuits in a state based upon the business contacts of one of their subsidiaries for causes of action arising outside the state.

In the case at bar, the factual record on the essential points is clear. Petitioner is a Netherlands corporation that the trial court recognized is not itself doing business in California. App. at 16a-17a. General *in personam* jurisdiction over Fokker Services B.V. was based on a broad, undefined and unexplained notion of agency. If a subsidiary is doing its own business (*i.e.*, selling products pursuant to contracts with its customers) and is not a sham, there can be no imputation of the subsidiary's contacts to its parent.

Had the court below applied the *Cannon* principles in determining whether FSI's contacts with California could be imputed to Fokker Services B.V., it would have reached a different result. Even if petitioner conceded every agency allegation in regard to the relationship

between FSI and Fokker Services B.V., jurisdiction over the parent based on common law or general agency would be lacking. Under the agency standard set forth in *Cannon* and the decisions properly following *Cannon*, FSI was not the agent of Fokker Services B.V. such that FSI's acts and its business could be deemed the parent's acts and business. There was no finding and no basis for finding that FSI was doing the business of its parent.

In summary, the Court should grant review and clarify for the guidance of trial courts when the contacts of a U.S. subsidiary can be imputed to a foreign parent, based upon an agency rationale, and specifically the scope of the agency under which the due process clause permits courts to impute the contacts of a subsidiary to a parent. The present uncertainty exposes foreign parent corporations to litigation in the United States simply because they formed a U.S. subsidiary to carry out or do their business. The trial courts are not respecting the corporate separateness of parent and subsidiary and their separate multistate and multinational business activities, which the Court (in *Cannon*) has to date required.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: August 31, 2000

APPENDIX

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Fourth Appellate District,
Division Three No. G02667/G027043
S088119

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

NORTHROP GRUMMAN CORPORATION,

Petitioner

v.

ORANGE COUNTY SUPERIOR COURT,

Respondent

FOKKER AIRCRAFT B.V.,

Real Party in Interest

The order filed on June 2, 2000, is hereby modified to include both of the above-captioned Court of Appeal case numbers.

/s/ GEORGE
Chief Justice

Dated: July 3, 2000

G026674
Fokker Services B.V. v.
The Superior Court of California et al.

Superior Court of Orange County

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4/3 No. G027043
S088119

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

NORTHROP GRUMMAN CORPORATION,

Petitioner

v.

ORANGE COUNTY SUPERIOR COURT,

Respondent

FOKKER AIRCRAFT B.V.,

Real Party in Interest

Application for stay and petition for review DENIED.

/s/ GEORGE
Chief Justice

Dated: June 2, 2000

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

G026674

(Super. Ct. No. 783990)

FOKKER SERVICES B.V.,

Petitioner,

v.

THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE,

Respondent;

NORTHROP GRUMMAN CORPORATION et al.,

Real Parties in Interest.

ORDER

THE COURT:*

The petition for a writ of mandate/prohibition is DENIED.

/s/ Crosby, J.
CROSBY, ACTING P.J.

Dated: April 27, 2000

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* Before Crosby, Acting P.J., Rylaarsdam, J., and Bedsworth, J.

SUPERIOR COURT OF
THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
DEPARTMENT C20

No. 78 39 90

LINDA ANDREWS, ETC., ET AL.,

Plaintiffs,

vs.

NORTHROP GRUMMAN, ETC., ET AL.,

Defendants.

HONORABLE WILLIAM F. MCDONALD,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT

January 12, 2000

APPEARANCES:

FOR THE PLAINTIFFS:	SPEISER, KRAUSE Attorneys at Law By: JOHN VETH
FOR DEFENDANT: NORTHROP GRUMMAN:	ALLEN, MATKINS, LECK, GAMBLE & MALLORY Attorneys at Law By: ED GREEN
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OFFICIAL COURT REPORTER
SANTA ANA, CALIFORNIA -
WEDNESDAY, JANUARY 12, 2000

AFTERNOON SESSION

—OOO—

(THE FOLLOWING PROCEEDINGS WERE HAD IN OPEN COURT:)

THE COURT: ANDREWS VERSUS NORTHROP?

MR. LEVINE: GOOD MORNING.

MR. VETH: GOOD MORNING. GOOD AFTERNOON, YOUR HONOR, JACK VETH.

THE COURT: HASN'T BEEN THAT LONG.

MR. VETH: JUST SEEMS THAT WAY. JACK VETH FROM THE SPEISER GROUP FOR THE ANDREWS PLAINTIFFS.

MR. LEVINE: KYLE LEVINE FOR TELEFLEX CONTROL SYSTEMS.

MS. MC NULTY: GOOD AFTERNOON, YOUR HONOR, SUZANNE MC NULTY FOR TELEFLEX CONTROL SYSTEMS, INC.

MR. SUTHERLAND: KEVIN SUTHERLAND FOR FOKKER CROSS-DEFENDANTS.

MR. GREEN: AFTERNOON, YOUR HONOR, ED GREEN, ALLEN MATKINS, FOR NORTHROP GRUMMAN.

THE COURT: OKAY.

MR. SUTHERLAND: YOUR HONOR, THERE'S A PHONE APPEARANCE BY—

THE COURT: OKAY, SOME ONE ON THE PHONE?

MS. WILSON: YES, YOUR HONOR, THERE IS, DIANE WILSON FOR THE FOKKER ENTITIES AND FOR THE FOKKER CROSS-DEFENDANTS AND I HAVE WITH ME JOE GARRITY (PH.SP.) AND LAURA MC GINN.

THE COURT: OKAY. THANK YOU ALL AND WE HAVE, LET'S SEE, SIX MOTIONS TO QUASH SERVICE OF SUMMONS AND CROSS-COMPLAINT ON CALENDAR AND ALSO A STATUS CONFERENCE TODAY, RIGHT?

MS. MC NULTY: YES, YOUR HONOR.

MR. VETH: YES, YOUR HONOR.

THE COURT: ALL RIGHT, AND WITH SO MANY MOTIONS CALENDARED PART OF IT WAS KEEPING THE FOKKER ENTITIES STRAIGHT, FRANKLY, PARTICULARLY WHEN WE HAVE A DBA AND INC. COUNTERPARTS.

MR. GREEN: PROBABLY A NUMBER OF THEM, YOUR HONOR.

THE COURT: YEAH. THE TENTATIVE WITH RESPECT TO FOKKER ELMO B.V. WAS TO GRANT THAT MOTION. WITH RESPECT TO FOKKER SERVICES, INC., TO DENY THE MOTION. WITH RESPECT TO FOKKER SPECIAL PRODUCTS B.V., GRANT THE MOTION. WITH RESPECT TO FOKKER AEROSTRUCTURES B.V., DENY THE MOTION; FOKKER AVIATION B.V., GRANT THE MOTION; FOKKER SERVICES B.V., DENY THE MOTION.

AND I WILL GO THROUGH EACH ONE OF THEM FOR YOU OR DO YOU WANT TO ADDRESS—

MS. WILSON: YOUR HONOR, THIS IS DIANE WILSON ON THE TELEPHONE. IF I MAY, I'D LIKE TO JUST BRIEFLY ADDRESS IN PARTICULAR THE DENIALS. IF I MAY START WITH FOKKER SERVICES B.V. AND ONE POINT THAT I WANTED TO MAKE WAS WITH RESPECT TO THE—

THE COURT: WAIT A MINUTE, WHICH FOKKER SERVICES?

MS. WILSON: FOKKER SERVICES B.V.

THE COURT: FOKKER SERVICES B.V., YES, OKAY, THAT IS DIFFERENT FROM FOKKER SERVICES, INC., YES.

MS. WILSON: WITH RESPECT TO FOKKER SERVICES B.V. ONE POINT THAT WE MADE IN THE PAPERS WAS THAT POINT ZERO ZERO ZERO ZERO NINE FOUR PERCENT OF THEIR SALES WORLDWIDE ARE TO CALIFORNIA. AND FOR THAT TYPE OF MINOR VOLUME WE WANTED TO BRING TO THE COURT'S ATTENTION, ALTHOUGH IT IS IN OUR PAPERS, AND POINT OUT AS WELL, WHICH IS IN OUR PAPERS, THE CITATION THAT IS BOAZ, B-O-A-Z, WHERE THE COURT OF APPEAL REJECTS NINE PERCENT AS A SUFFICIENT BASIS.

THE COURT: OKAY. ANYTHING ELSE ON THAT POINT?

MS. WILSON: IN CONNECTION WITH THE AEROSTRUCTURES I REALIZE WE SUBMITTED—EVERYONE SUBMITTED VOLUMINOUS PAPERS.

THE COURT: YES, YOU DID.

MS. WILSON: I JUST WANTED TO TRY TO GET HIGHLIGHTS, IS I GUESS THE BEST WAY TO PUT IT. IN CONNECTION WITH THE AEROSTRUCTURES, THERE WERE ACTUALLY TWO SHIPMENTS TOTALING ABOUT $6,500 WITH RESPECT TOP AEROSTRUCTURES IN THIS TIME FRAME, AND I WANTED TO POINT OUT THAT I THINK PERHAPS ONE OF THE POTENTIAL POINTS OF CONFUSION COULD BE THAT THERE WAS A REFERENCE IN THE OPPOSITION PAPERS TO THERE BEING SALES OF APPROXIMATELY TWO MILLION GILDERS, BUT THE TESTIMONY AND THE WRITTEN RECORDS SHOW THAT THAT WAS NOT SALES AT ALL, THAT THERE HAVEN'T BEEN ANY SALES APART FROM THAT APPROXIMATELY $6500 BECAUSE BEING REIMBURSED IN CONNECTION WITH A MILITARY CONTRACT IT HAS YET TO OTHER THAN REVENUE AND I WANT TO MAKE SURE THAT THAT POINT WAS CLEAR.

AND THEN WITH RESPECT TO SERVICES, INC., FOKKER SERVICES, INC., AGAIN, THE RECORD SHOWS THAT THE SALES PERCENTAGE ATTRIBUTABLE TO CALIFORNIA IS ROUGHLY FIVE PERCENT AND IT SAYS HERE DOWN TO THREE, BUT EVEN IF YOU TAKE FIVE PERCENT AS THE NUMBER, YOU ARE TALKING ABOUT SIGNIFICANTLY LESS THAN THE NINE PERCENT THAT WAS REJECTED IN BOAZ BY THE COURT OF APPEAL.

THE COURT: OKAY.

MS. WILSON: THANK YOU, YOUR HONOR.

THE COURT: RESPOND?

MS. MC NULTY: WELL, THERE'S SO MUCH WE COULD SAY IN RESPONSE TO THAT, YOUR

HONOR. THE NUMBERS FROM B.V., THE PERCENTAGES THEY'VE GIVEN ARE VERY MISLEADING, PARTICULARLY IF YOU ARE IMPUTING THE CONTACTS OF F.S.I. TO F.S.B.V. TO TIME APPEARED. FROM 1996 THROUGH THE PRESENT, THERE'S BEEN 428 MILLION IN SALES TO CALIFORNIA.

THEIR PERCENTAGES DON'T TAKE INTO CONSIDERATION THE THOUSANDS AND THOUSANDS OF SHIPMENTS TO CALIFORNIA. IT DOES NOT TAKE INTO CONSIDERATION THE MILLIONS OF DOLLARS WORTH OF SUPPLIES TO THE STATE OF CALIFORNIA, DOES NOT TAKE INTO CONSIDERATION THE TELEPHONE CALLS, TRIPS.

IN ADDITION, AS TO F.S.I., AGAIN, THOSE NUMBERS, THE PERCENTAGES, ARE FLAT OUT WRONG. THEY'VE USED A PERCENTAGE OF SOMETHING OH TWO AND POINT OH OH SEVEN TWO TO REPRESENT THE CUSTOMERS, SALES TO CUSTOMERS OF CALIFORNIA, AND MR. KOUTERS' DEPOSITION, PERSON MOST KNOWLEDGEABLE, F.S.I., HE CORRECTED HIMSELF AND SAID IT WAS ACTUALLY FIVE PERCENT, THAT THAT WAS THE NUMBER THAT REFERENCED THE SALES TO CALIFORNIA, K-O-U-T-E-R-S.

AND YET, IN THE PAPERS FOKKER HAS AGAIN ADOPTED THAT INCORRECT PERCENTAGE WHICH WAS CORRECTED BY THEIR OWN PERSON MOST KNOWLEDGEABLE AT THAT DEPOSITION, AND, AGAIN, THAT NUMBER DOESN'T TAKE INTO CONSIDERATION THE MILLIONS AND MILLIONS OF DOLLARS OF SALES TO CALIFORNIA CUSTOMERS, THE DROP SHIPMENTS TO CALIFORNIA, DROP SHIPMENTS TO CALIFORNIA CUSTOMERS, THE NUMEROUS TRIPS, THE NUMEROUS TELEPHONE CALLS, THE MILLIONS

OF DOLLARS WORTH OF SUPPLIES TO THE STATE OF CALIFORNIA.

I CAN—IN FACT, WE HAVE PREPARED A CALIFORNIA CHART OUTLINING THE EVIDENCE, SHOWING CALIFORNIA CONTACTS AS TO EACH OF THE ENTITIES, IF YOU WOULD LIKE TO TAKE A LOOK AT THAT. IT PUTS IT IN A NICE, CLEAN, NEAT FORMAT AND JUST LISTS EACH CONTACT, ONE BY ONE, AND THEY ARE BRINGING UP ONE PERCENT AND WE HAVE VARIOUS ENTITIES WHICH PERCENTAGES ARE MISLEADING AND DO NOT BEGIN TO COMPRISE THE TOTAL AMOUNT OF CONTACTS FOR THE STATE OF CALIFORNIA.

THE COURT: GO AHEAD, NORTHROP GRUMMAN.

MR. GREEN: I KNOW WHEN I'M LOSING, YOUR HONOR.

THE COURT: I'M SORRY?

MR. GREEN: I SAY I KNOW WHEN I'M LOSING.

THE COURT: YOU'RE AHEAD ON THESE THREE.

MR. GREEN: THAT WAS MY POINT, VERY PLEASED.

THE COURT: OKAY, BACK TO MISS WILSON.

MR. GREEN: JUST GIVE US ANOTHER CHANCE TO FAX IN THIS CASE.

THE COURT: MISS WILSON?

MS. WILSON: YES, YOUR HONOR. I'M SORRY, I COULDN'T UNDERSTAND WHAT MR. GREEN WAS SAYING, BUT IN REFERENCE TO MISS MC NULTY'S COMMENTS, THE OTHER POINTS THAT

SHE IS MAKING ARE SEPARATE AND APART FROM SALES. IT'S NOT A MISLEADING NUMBER.

THE FIVE PERCENT IS THE FIVE PERCENT AND IF YOU COMBINE FIVE PERCENT OF SALES OF FOKKER SERVICES, INC., AND WE WEIGHT IT IMPROPERLY TO THE POINT ZERO ZERO ZERO NINE FOUR PERCENT OF SALES OF FOKKER SERVICES, B.V., YOU STILL HAVE ONLY FIVE POINT ZERO ZERO ZERO ZERO NINE FOUR PERCENT. THE QUESTION IS WHETHER THE COURT IS GOING TO HOLD THAT THAT' S SUFFICIENT.

AND THE DROP SHIPMENT IS NOT TO CALIFORNIA CUSTOMERS. THEY ARE OUTSIDE, OUTSIDE OF CALIFORNIA, WHO ARE REQUESTING SHIPMENTS BE MADE TO THEIR AIRCRAFT ON GROUND IN CALIFORNIA, THE STATE OF CALIFORNIA AREA, AND THAT IS NOT A CALIFORNIA SALE.

SO I THINK THE CONFUSION STEMS FROM TRYING TO PUSH THEM TOGETHER, IN ANY EVENT, TRYING TO ATTRIBUTE THESE CONTACTS TOGETHER IN THIS PARTICULAR CASE WHERE YOU DON'T HAVE THE CLAIMS BEING MADE AGAINST EACH, FOKKER SERVICES B.V. OR FOKKER SERVICES, INC., IN RELATION TO ANY OF THESE CONTACTS THAT ARE BEING ASSERTED IN THIS CASE.

WE WOULD SUBMIT THAT IT'S IMPROPER TO COMBINE THOSE CONTACTS, IN ANY EVENT. YOU CANNOT PROPERLY ATTRIBUTE SERVICES, INC., CONTACTS TO SERVICES B.V., AND WHILE I'M NOT MAKING ANY CONCESSION FOR A FUTURE CASE, I THINK BY ILLUSTRATION THE BEST WAY TO EXPLAIN IT IS THAT IT HAS BEEN DONE IN CERTAIN INSTANCES WHERE YOU'VE

GOT CONTROL OF A SUBSIDIARY AND THERE IS RELATIONSHIPS TO THE CAUSE OF ACTION.

AND AN EXAMPLE OF THAT WOULD IF, FOR EXAMPLE, THERE WAS A CLAIM BY A CALIFORNIA CUSTOMER THAT A DEFECTIVE PART HAD BEEN SOLD BY FOKKER SERVICES, INC., TO IT, I THINK THAT THAT CALIFORNIA CUSTOMER MAY BE TAKING THE POSITION IN A FUTURE CASE THEY WOULD HAVE JURISDICTION OVER FOKKER SERVICES B.V., BUT WE ARE NOWHERE NEAR THAT IN THIS CASE AND THERE'S NO CLAIM BY ANYONE THERE'S A RELATIONSHIP BETWEEN ANY OF THE CONTACTS OF FOKKER SERVICE, INC., AND THE CLAIMS BEING MADE BY FOKKER SERVICES B.V. IN THIS CASE.

THE COURT: OKAY. IS THERE ANYTHING ELSE, MISS MC NULTY?

MS. MC NULTY: I DON'T KNOW IF I NEED TO SPEAK. THERE'S AMPLE EVIDENCE SHOWING AN ACTIVE RELATIONSHIP BETWEEN—I THINK THERE'S AN OVERABUNDANCE OF EVIDENCE THERE IS AN ACTIVE RELATIONSHIP BETWEEN F.S.B.V. AND F.S.I. AND THEIR TIES SHOULD BE IMPUTED.

THE COURT: MR. GREEN IS TRYING TO ADVISE YOU WHEN YOU'RE AHEAD IF YOU OPEN YOUR MOUTH ALL YOU CAN DO IS PUT YOUR FOOT IN IT.

MS. MC NULTY: OKAY, WELL, IT'S A LESSON HARD LEARNED FOR ME.

THE COURT: OKAY. WITH RESPECT TO THOSE THREE, TO GO BACK TO THEM, AND ITS INTERESTING JUST TRYING TO KEEP TRACK OF THE

VARIOUS ENTITIES, FOKKER SERVICES, INC., IS A U.S. CORPORATION, IN VIRGINIA, WITH ONGOING TIES IN CALIFORNIA. DOES NOT DENY ITS NON-OPERATOR CONTRACTS OR ITS CALLS TO CALIFORNIA, BUT DOES TRY TO ARGUE THEY'RE DE MINIMUS OR, QUOTES, PERSONAL, UNQUOTE.

NONRESIDENTS WHOSE COMMERCIAL ACTIVITIES IMPACT CALIFORNIA ON A SUBSTANTIAL, CONTINUOUS AND SYSTEMATIC BASIS ARE SUBJECT TO GENERAL JURISDICTION. SUCH A DEFENDANT'S CONTACTS WITH THE FORUM ARE SO WIDE-RANGING THAT THEY TAKE THE PLACE OF PHYSICAL PRESENCE IN THE FORUM STATE AS A BASIS FOR JURISDICTION.

HERE, FOKKER SERVICES, INC., HAS ADMITTED AN ONGOING RELATIONSHIP WITH CALIFORNIA, BUT CLAIMS THE RELATIONSHIP IS IRRELEVANT. HOWEVER, BY ADMITTING THAT THERE ARE SEVERAL CONTACTS, COMMUNICATIONS, ET CETERA, MOVING PARTY HAS AVAILED HIMSELF OF THE BENEFITS OF CALIFORNIA JURISDICTION AND THE FORESEEABILITY OF SUIT OVER HERE. SO DENIAL AS TO FOKKER SERVICES, INC., IS BASED ON GENERAL JURISDICTION GROUNDS.

FOKKER AEROSTRUCTURES B.V. IS SIMILAR TO FOKKER SERVICES, INC. THERE APPEARS TO BE AN ONGOING AND CONTINUOUS BUSINESS RELATIONSHIP WITHIN THE FORUM STATE, CALIFORNIA: CONTRACTS, SOLICITING BUSINESS, COMMUNICATIONS, ET CETERA. FURTHER, MOVING PARTY ALSO SENT NORTHROP GRUMMAN A LETTER CONCERNING CUSTOMER SATISFACTION. WONDER HOW THAT WAS BILLED OUT? SO THERE ARE SUFFICIENT CALIFORNIA CONTACTS TO IMPOSE JURISDICTION SO THAT TRADI-

TIONAL NOTIONS OF FAIRNESS ARE NOT OFFENDED.

THEN THERE'S ALSO AN ISSUE HERE AS TO SUCCESSOR LIABILITY. MOVING PARTY HAS NOT REALLY DISPUTED THAT FOKKER AEROSTRUCTURES IS THE SUCCESSOR TO FOKKER AIRCRAFT B.V. RATHER, IT ARGUES THAT THE DEFENDANTS SHOULD BE CONSIDERED SEPARATELY WHEN DETERMINING JURISDICTION. CALIFORNIA COURTS CAN EXERCISE JURISDICTION OVER A FOREIGN CORPORATION ITSELF WHICH ITSELF HAS ABSOLUTELY NO CONTACTS WITH CALIFORNIA IF IT HAS ASSUMED THE LIABILITIES OF A PREDECESSOR CORPORATION OR WHERE AT LEAST IT IS CONTINUING THE SAME BUSINESS AS THE PREDECESSOR. SO THE MOTION IS DENIED AS TO FOKKER AEROSTRUCTURES B.V.

THAT LEFT FOKKER SERVICES B.V., AND WHILE IT'S TRUE PART OF A SUBSIDIARY RELATIONSHIP IS NOT ENOUGH BY ITSELF TO GIVE CALIFORNIA COURTS JURISDICTION OVER A PARENT; HOWEVER. THE CLOSENESS OF THE ECONOMIC NEXUS BETWEEN A PARENT AND SUBSIDIARY SHOULD BE EXAMINED, BUT IF IT APPEARS THAT THE SUBSIDIARY IS THE AGENT OF THE PARENT, IT MAY BE SUBJECT TO PERSONAL JURISDICTION IN THE CALIFORNIA COURTS.

HERE, THERE'S NO DISPUTE THAT FOKKER SERVICES, INC., IS AN AGENT OF ITS PARENT FOKKER SERVICES B.V. THE AGENT HAS ONGOING CONTACTS WITH CALIFORNIA WHICH MAY SUFFICIENTLY IMPOSE JURISDICTION IN CALIFORNIA. AND WHETHER OR NOT THERE'S A SUF-

FICIENT BASIS FOR LIABILITY BASED ON THE ACTS OF THE AGENCY IS A QUESTION OF FACT, NOT A JURISDICTIONAL ISSUE. DENY AS TO FOKKER SERVICES B.V. AS WELL.

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Attorney for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

Case No. 783990

LINDA ANDREWS, individually and as Representative of the Estate of David Andrews, deceased; JILL ANDREWS, individually

Plaintiffs,

v.

NORTHROP GRUMMAN CORPORATION, TELEFLEX CONTROL SYSTEMS, INCORPORATED, and DOES 1 through 10, Inclusive

Defendants.

COMPLAINT

1. Negligence
2. Strict Products Liability

DEMAND FOR JURY TRIAL

Come now plaintiffs, LINDA ANDREWS, individually and as Representative of the Estate of David Andrews, deceased, and JILL ANDREWS, individually, and complain against the defendants, respectfully showing the Court as follows:

ALLEGATIONS COMMON AS TO ALL CAUSES OF ACTION

1. David Andrews, decedent, was a resident of the County of Santa Clara in the State of California residing at 1105 Briar Ridge Drive, San Jose, California 95123.

2. LINDA ANDREWS is the surviving spouse of David Andrews, deceased.

3. JILL ANDREWS is the surviving daughter of David Andrews, deceased.

4. At all times herein mentioned, Plaintiffs and each of them were residents of the County of Santa Clara in the State of California residing at 1105 Briar Ridge Drive, San Jose, California 95123.

5. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive. Plaintiffs allege that DOES 1 through 10, and each and all of them, were in some manner responsible for the acts, omissions, damages and proxmiately caused the injuries as alleged hereinafter. Plaintiffs therefore sue said defendants by such fictitious names in accordance with California *Code of Civil Procedure* Section 474. Plaintiffs will amend this Complaint to show the true names and capacities of these defendants when same has been ascertained.

6. Defendant NORTHROP GRUMMAN CORPORATION is a corporation, organized and existing under the laws of the State of Delaware, licensed and authorized to transact and is transacting business in the State of California, with its principal place of business at 1840 Centruy Park East, Los Angeles, California 90067.

7. Defendant TELEFLEX CONTROL SYSTEMS, INCORPORATED is a corporation, organized and existing under the laws of the State of Pennsylvania, licensed and authorized to transact and is transacting business in the State of California, with its principal place of business at 1950 Williams Drive, Oxnard, California 93030.

8. On October 31, 1996, Transportes Aeros Regionais S.A. (hereinafter TAM), a Brazilian regional air carrier with its business operations located in Sao Paulo, Brazil, had scheduled Flight 402 from Sao Paulo, Brazil to Rio De Janeiro, Brazil.

9. TAM Flight 402 was a regularly scheduled commercial flight on which David Andrews, decedent, was a passenger.

10. Within moments after take-off, the right engine thrust-reverser deployed approximately three times, preventing the aircraft from ascending and subsequently causing the plane to crash into nearby structures. All 90 passengers, six crew members, and several people on the ground died in the crash.

11. A break in the Teleflex cable caused the right reverser circuits to stick open thereby causing or contributing to the failure of the thrust-reversers.

FIRST CAUSE OF ACTION FOR NEGLIGENCE

A. AGAINST NORTHROP GRUMMAN CORPORATION

12. Plaintiffs reallege and incorporate by reference herein Paragraphs 1 through 11 of this Complaint as if fully set forth herein.

13. At all times relevant to liability, decedent David Andrews was a passenger on TAM Flight 402.

14. At all times relevant to liability, defendant NORTHROP GRUMMAN CORPORATION , as manufacturer of the thrust-reverser on TAM Flight 402, owed a duty to David Andrews, LINDA ANDREWS and JILL ANDREWS, as forseeable victims of a defective thrust-reverser, to act as a reasonably prudent manufacturer in supplying a non-defective thrust-reverser.

15. Defendant NORTHROP GRUMMAN CORPORATION breached their duty by supplying a defective thrust-reverser which was dangerous beyond the expectations of an ordinary consumer and failed to give adequate warnings of such dangers.

16. As a result of the defective thrust-reverser, TAM Flight 402 was unable to continue a climb after take off which resulted in the crash which killed passenger, David Andrews.

17. The defect in the thrust-reverser existed at the time it left the control of defendant, NORTHROP GRUMMAN CORPORATION .

18. Defendant, NORTHROP GRUMMAN CORPORATION, knew the trust-reverser would be purchased and used without inspection for defects.

19. As a direct and proximate result of the negligence of NORTHROP GRUMMAN CORPORATION, decedent David Andrews sustained injuries which ultimately resulted in his death.

20. As a further direct and proximate result of the defects in the design and manufacture of the thrust-reverser, Plaintiffs LINDA ANDREWS and JILL ANDREWS, and each of them, have been deprived of David Andrews' love, care, comfort, protection, advice, society, physical assistance and financial support in an amount to be proved at trial, but not less than the jurisdictional minimum of this court, exclusive of interests and costs.

21. The aforesaid acts of NORTHROP GRUMMAN CORPORATION were performed in conscious disregard for the rights and safety of users of the thrust-reverser, and justify the award of exemplary and punitive damages.

B. AGAINST TELEFLEX CONTROL SYSTEMS, INCORPORATED

22. Plaintiffs reallege and incorporate by reference herein Paragraphs 1 through 11 of this Complaint as if fully set forth herein.

23. At all times relevant to liability, decedent David Andrews was a passenger on TAM Flight 402.

24. At all times relevant to liability, defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, as manufacturer of the Teleflex cable on TAM Flight 402, owed a duty to David Andrews, LINDA ANDREWS and JILL ANDREWS as foreseeable victims of a defective Teleflex cable to act as a reasonably prudent manufacturer in supplying a non-defective Teleflex cable.

25. Defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, breached their duty by supplying a defective Teleflex cable which was dangerous beyond the expectations of an ordinary consumer and failed to give adequate warnings of such dangers.

26. As a result of the defective Teleflex cable, the right reverser circuits were caused to stick open thereby causing or contributing to the failure of the thrust-reversers which resulted in the crash which killed passenger, David Andrews.

27. The defect in the Teleflex cable existed at the time it left the control of defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED.

28. Defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, knew the Teleflex cable would be purchased and used without inspection for defects.

29. As a direct and proximate result of the negligence of TELEFLEX CONTROL SYSTEMS, INCORPORATED, decedent David Andrews sustained injuries which ultimately resulted in his death.

30. As a further direct and proximate result of the defects in the design and manufacture of the Teleflex cable, Plaintiffs LINDA ANDREWS and JILL ANDREWS, and each of them, have been deprived of David Andrews' love, care, comfort, protection, advice, society, physical assistance and financial support in an amount to be proved at trial, but not less than the jurisdictional minimum of this court, exclusive of interest and costs.

31. The aforesaid acts of TELEFLEX CONTROL SYSTEMS, INCORPORATED were performed in conscious disregard for the rights and safety of users of the thrust-reverser, and justify the award of exemplary and punitive damages.

SECOND CAUSE OF ACTION
STRICT PRODUCTS LIABILITY

A. AGAINST NORTHROP GRUMMAN CORPORATION

32. Plaintiffs reallege and incorporate by reference herein Paragraphs 1 through 11 of this Complaint as if fully set forth herein.

33. At all times relevant, defendant, NORTHROP GRUMMAN CORPORATION, manufactured, designed, assembled, sold, installed, tested, maintained and repaired the right engine thrust reverser located on TAM Flight 402.

34. The right engine thrust reverser was defective at the time that it was designed manufactured, assembled, sold, installed, tested, maintained and repaired by defendant, NORTHROP GRUMMAN CORPORATION, and the defect existed at the time the right engine thrust reverser left defendant's possession.

35. The subject thrust reverser's defects were such that risks inherent in its design outweighed the benefits of its design.

36. At all times mentioned herein, defendant, NORTHROP GRUMMAN CORPORATION, had a duty to properly design, manufacture, assemble, sell, install, test, maintain and repair the thrust reverser and/or its component parts. At all times mentioned herein, defendant, NORTHROP GRUMMAN CORPORATION, knew, or in the exercise of reasonable care, should have know, that if said thrust reverser was not properly designed, manufactured, assembled, sold, installed, tested, maintained and repaired, it was likely to cause injury.

37. Defendant, NORTHROP GRUMMAN CORPORATION, so negligently and carelessly designed, manufactured, assembled, sold, installed, tested, maintained and repaired said thrust reverser and/or its component parts so that it was a defective and dangerous product, and unsafe for the use and purpose for which it was intended when used as recommended by NORTHROP GRUMMAN CORPORATION.

38. NORTHROP GRUMMAN CORPORATION knew the thrust reverser would be purchased and used without inspection for defects.

39. At the time of the crash of TAM Flight 402, the thrust reverser was being used for the purpose it was intended, and in the manner that was intended, by defendant, NORTHROP GRUMMAN CORPORATION.

40. As a direct and proximate result of the negligence of NORTHROP GRUMMAN CORPORATION and/or the defect in the thrust reverser, decedent David Andrews, sustained injuries which ultimately resulted in his death.

41. Decedent David Andrews' injury and death was a direct and proximate result of a use of the thrust reverser that was reasonably forseeable by defendant, NORTHROP GRUMMAN CORPORATION, and involved a substantial danger not readily apparent and of which danger adequate warnings were not given.

42. As a further direct and proximate result of the defects in the thrust reverser's design, LINDA ANDREWS and JILL ANDREWS have been deprived of David Andrews' love, care, comfort, protection, advice, society, physical assistance and financial support in an amount to be proved at trial, but not less than the jurisdictional minimum of this Court, exclusive of interests and costs.

43. The aforesaid acts of NORTHROP GRUMMAN CORPORATION were performed in conscious disregard for the rights and safety of users of the thrust reverser and justify the award of exemplary and punitive damages.

B. AGAINST TELEFLEX CONTROL SYSTEMS, INCORPORATED

44. Plaintiffs reallege and incorporate by reference herein Paragraphs 1 through 11 of this Complaint as if fully set forth herein.

45. At all times relevant defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, manufactured, designed, assembled, sold, installed, tested, maintained and repaired the Teleflex cable which was located on TAM Flight 402.

46. The Teleflex cable was defective at the time that it was designed manufactured, assembled, sold, installed, tested, maintained and repaired by defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, and the defect existed at the time the Teleflex cable left defendant's possession.

47. The subject Teleflex cable's defects were such that risks inherent in its design outweighed the benefits of its design.

48. At all times mentioned herein, defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, had a duty to properly design, manufacture, assemble, sell, install, test, maintain and repair the Teleflex cable and/or its component parts. At all times mentioned herein, defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, knew, or in the exercise of reasonable care, should have know, that if said Teleflex cable was not properly

designed, manufactured, assembled, sold, installed, tested, maintained and repaired, it was likely to injure the person by whom it was used.

49. Defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, so negligently and carelessly designed, manufactured, assembled, sold, installed, tested, maintained and repaired said Teleflex cable and/or its component parts so that it was a defective and dangerous product, and unsafe for the use and purpose for which it was intended when used as recommended by TELEFLEX CONTROL SYSTEMS, INCORPORATED.

50. TELEFLEX CONTROL SYSTEMS, INCORPORATED knew the Teleflex cable would be purchased and used without inspection for defects.

51. At the time of the crash of TAM Flight 402, the Teleflex cable was being used for the purpose it was intended, and in the manner that was intended, by defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED.

52. As a direct and proximate result of the negligence of TELEFLEX CONTROL SYSTEMS, INCORPORATED and/or the defect in the Teleflex cable, decedent David Andrews, sustained injuries which ultimately resulted in his death.

53. Decedent David Andrews' injury and death was a direct and proximate result of a use of the Teleflex cable that was reasonably foreseeable by defendant, TELEFLEX CONTROL SYSTEMS, INCORPORATED, and involved a substantial danger not readily apparent and of which danger adequate warnings were not given.

54. As a further direct and proximate result of the defects in the Teleflex cable's design, LINDA ANDREWS and JILL ANDREWS have been deprived of David Andrews' love, care, comfort, protection, advice, soci-

ety, physical assistance and financial support in an amount to be proved at trial, but not less than the jurisdictional minimum of this Court, exclusive of interests and costs.

55. The aforesaid acts of TELEFLEX CONTROL SYSTEMS, INCORPORATED were performed in conscious disregard for the rights and safety of users of the Teleflex cable and justify the award of exemplary and punitive damages.

WHEREFORE, plaintiffs pray for judgment against the defendants, and each of them, as follows:

1. For general damages in an amount in excess of the minimum jurisdictional limits of this Court;

2. For special damages and related items of expense, according ot proof;

3. For punitive damages;

4. For prejudgment interest as may be permitted by law;

5. For costs of suit incurred herein;

6. For such other and further relief as the Court may deem just and proper.

Dated: August 28, 1997

Respectfully submitted,

SPEISER, KRAUSE, MADOLE & COOK

by: /s/ John J. Veth
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE

Case No. 783990

ACTION FILED: Sept. 9, 1997

LINDA ANDREWS, individually and as Representative of the Estate of David Andrews, deceased, JILL ANDREWS, individually,

Plaintiffs,

v.

NORTHROP GRUMMAN CORPORATION, TELEFLEX CONTROL SYSTEMS, INCORPORATED, and DOES 1 through 10, Inclusive

Defendants.

NORTHROP GRUMMAN CORPORATION,

Cross-Complainant,

v.

FOKKER AVIATION B.V.; FOKKER SERVICES B.V.; FOKKER AEROSTRUCTURES B.V.; FOKKER ELMO B.V.; FOKKER SPECIAL PRODUCTS B.V.; FOKKER DEFENSE MARKETING; and ROES 1 through 100, Inclusive,

Cross-Defendants.

CROSS-COMPLAINT FOR DECLARATORY RELIEF FOR CONTRIBUTION, DECLARATORY RELIEF FOR EQUITABLE INDEMNITY AND EQUITABLE INDEMNITY

Assigned for All Purposes to the,
Honorable William F. McDonald

Defendant and Cross-Complainant, NORTHROP GRUMMAN CORPORATION, complains and alleges as to cross-defendants, and each of them, as follows:

FIRST CAUSE OF ACTION

(Declaratory Relief Against All Cross-Defendants For Contribution)

1. The events alleged herein occurred within the jurisdiction of the above-entitled court.

2. The true names and capacities, whether individual, governmental, corporate or otherwise of ROES 1 through 100, inclusive, are presently unknown to the cross-complainant and therefore sues said cross-defendants by

such fictitious names; cross-complainant is informed and believes and thereon alleges that each of the cross-defendants designated herein as a ROE is legally responsible in some manner for the events herein alleged and, therefore, liable to cross-complainant for indemnity and/or contribution.

3. Cross-complainant is informed and believes and based upon said information and belief alleges that said cross-defendants, and each of them, are the agent, servants and employees of each other and were at all times acting within the course and scope of said agencies and employment.

4. Cross-complainant has been named as a defendant in *Andrews v. Northrup Grumman, et al.*, Orange County Superior Court Case No. 783990, wherein plaintiffs have sued for damages. Said complaint is incorporated herein by reference, as though set forth in full for information purposes only.

5. Cross-complainant, as defendant in the complaint, has heretofore answered and generally denied any and all material allegations and has set forth special affirmative defenses thereto, based on information and belief. Said answer is incorporated by reference as though fully set forth herein.

6. If, upon trial of this matter, cross-complainant is held legally responsible to plaintiffs for the injuries and damages alleged in the underlying complaint, cross-complainant will have been damaged as a proximate result of the acts and omissions of cross-defendants, and each of them, as hereinbefore alleged, and in an amount equal to the total sum which the trier of fact awards the plaintiffs, together with any award of costs and attorney's fees.

7. Cross-complainant further contends that if it is held liable to plaintiffs for injuries or damages under the complaint, cross-complainant is entitled to contribution for the payment of any judgment in favor of plaintiffs and against this cross-complainant, or any settlement in anticipation of a judgment in proportion to the actual culpability, fault, responsibility and negligence caused and created by cross-defendants, and each of them, in the happening of the alleged accident, and cross-defendants, and each of them, should indemnify cross-complainant and hold it harmless for any and all claims by plaintiffs, and reimburse for any monies paid in satisfaction of any judgment or any monies paid as settlement in anticipation of any judgment, for all attorney's fees in defending said action and the costs of investigation of said accident and that said cross-complainant should have a carryover judgment against cross-defendants, and each of them, therefor.

8. By reason of the foregoing, cross-complainant contends that if it is held liable to plaintiffs for the damages set forth in the complaint, that under the doctrine of indemnity for comparative contribution under *American Motorcycle Association v. Superior Court* (1978) 20 Cal.3d 57, cross-complainant is entitled to contribution and/or indemnification on the basis that cross-defendants, and each of them, should be required to share liability with cross-complainant pro rata, on the basis of the relative fault that each bears to the total damages award suffered, or received, if any, by plaintiffs, in the form of any judgment, settlement or compromise. Cross-complainant further contends that it is entitled to be reimbursed for attorney's fees in defending said action and for the investigation of the facts of said accident, and that cross-complainant should have a pro rata carryover

judgment against cross-defendants, and each of them, therefor.

SECOND CAUSE OF ACTION

(Declaratory Relief Against All Cross-Defendants For Equitable Indemnification)

9. Cross-complainant realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 8 of the First Cause of Action as though set forth at length herein.

10. An actual controversy has arisen and now exists between cross-complainant and cross-defendants, and each of them, concerning respective rights and duties in that cross-complainant maintains that it is entitled to indemnification and/or contribution on a pro rata basis of the relative fault of cross-complainant and cross-defendants, and each of them, should plaintiffs recover by way of judgment, settlement or compromise of this action.

11. Cross-complainant further contends that the trier of fact in the instant action should declare, as part of the judgment herein, the percentage or ratio of contributing culpability, fault, responsibility and/or negligence between cross-complainant and cross-defendants, and each of them, so the actual contributing culpability, fault and negligence of each party can be determined and set forth in special interrogatories, jury verdict, and judgment.

12. Cross-complainant has no other existing speedy, accurate, or proper remedy other than that prayed for by which the rights of the parties hereto may be determined.

THIRD CAUSE OF ACTION

(Equitable Indemnity Against All Cross-Defendants)

13. Cross-complainant realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 8 of the First Cause of Action and paragraphs 9 through 12 of the Second Cause of Action as though set forth in length herein.

14. Cross-complainant denies that it was in any way primarily or actively negligent and its liability, if any, to cross-complainant's alleged liability would be solely vicarious or would be based upon passive and secondary conduct, or would arise as a matter of law. The damages of plaintiffs, if any, were the alleged result of the active and affirmative negligence of the cross-defendants, and each of them, as described above.

15. If, upon trial of this matter, cross-complainant should be held liable to plaintiffs or to cross-defendants, and each of them, then such liability will be solely of a passive, secondary, vicarious and derivative nature and predicated upon the direct, primary active and affirmative acts and/or omissions of the cross-defendants, and each of them, for any and all amounts which may in good faith be paid by way of compromise, settlement, or judgment and, further, will be entitled to costs and expenses in connection therewith. As a direct and proximate result of the acts and omissions of cross-defendants, and each of them, as hereinbefore alleged, cross-complainant will have been damaged in an amount equal to that portion of the total amount of the verdict which is attributable to acts and omissions of dross[sic]-defendants, and each of them, in that cross-complainant would be liable for the total amount of such verdict.

16. As a further, proximate result of the alleged acts and omissions of dross[sic]-defendants, and each of them, cross-complainant has been required and in the future will be required to incur costs, expenses and attorney's fees in defending itself against all claims herein in sums and amounts now unknown and not as yet fully ascertained, which will be proved.

17. Based upon the foregoing, cross-complainant is entitled to indemnification from the cross-defendants, and each of them, if, upon the trial of this matter, cross-complainant is held liable to plaintiffs.

WHEREFORE cross-complainant prays for judgment, decree, and order against cross-defendants, and each of them, as follows:

1. That in the event a judgment or verdict is rendered against cross-complainant in favor of plaintiffs, that cross-complainant has a carryover judgment against cross-defendants, and each of them, herein, for indemnity and/or contribution for their portion of the judgment representing cross-defendants' actual ration or percentage of fault and/or responsibility for the incident and damages giving rise to this litigation;

2. That cross-complainant has a judgment against cross-defendants, and each of them, for a declaration of rights, privileges, duties and obligations as between parties, and each of them;

3. That cross-complainant has judgment against the cross-defendants, and each of them, for all sums that may be adjudged in the original action and in favor of plaintiffs;

4. For an order of this court that cross-complainant is entitled to fully indemnified by cross-defendants, and each of them, for any and all settlements or compromise

entered into by cross-complainant with plaintiffs, if any, and for attorneys fees, courts costs, investigative costs;

5. For costs of suit incurred herein; and

6. For such other and further relief as the court may deem just and proper.

Dated: January 5, 1999

BRONSON, BRONSON
& MCKINNON LLP

By: /s/ Edwin W. Green
EDWIN W. GREEN
Attorneys for Defendant and Cross-Complainant NORTHROP GRUMMAN CORPORATION

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Attorneys for Defendant and Cross-Complainant
NORTHROP GRUMMAN CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

No. 783990

LINDA ANDREWS ET AL.,

Plaintiffs,

v.

NORTHROP GRUMMAN CORPORATION ET AL.,

Defendants.

NORTHROP GRUMMAN CORPORATION,

Cross-Complainant,

v.

FOKKER AVIATION B.V. ET AL.,

Cross-Defendants.

NORTHROP GRUMMAN'S SUPPLEMENTAL OPPOSITION TO FOKKER SERVICES B.V. AND FOKKER SERVICES INC.'S MOTIONS TO QUASH FOR LACK OF PERSONAL JURISDICTION

[Declaration of Lisa R. Kamrath Filed Concurrently Herewith]

[FILED UNDER SEAL]

DATE: January 12, 2000

TIME: 1:30 p.m.

PLACE: Courtroom of the Honorable William F. McDonald

Assigned for all purposes to the Honorable William F. McDonald

[Relevant Excerpts from Brief]

2. Because FSI Is the Agent of FSBV, the Court May Exercise General Jurisdiction over FSBV.

It is a "well established" principal "that where a foreign corporation uses a wholly owned subsidiary as a mere agent or instrumentality of the foreign parent corporation, then the state may exercise jurisdiction over the foreign corporation." *Northern Natural Gas Co. v. Superior Court*, 64 Cal.App.3d 983, 994 (1976). Here the record is clear that FSI was acting as an agent for FSBV, in California specifically and North America more generally. As a result, the Court may exercise general jurisdiction. Thus, because the court may exercise general jurisdiction over FSI, it may exercise general jurisdiction over FSBV.

The agency relationship between FSBV and FSI is established, first, by the 1997 Business Agreement between them. *See* Exhibit 59 to the Deposition of Onno Rijsdijk.[6, 7] [sic] Under that agreement, "FSI agrees to act as *sales agent* for Fokker [Services, B.V.] for, among other things, the sale within the United States and Canada . . . of aircraft spare parts and tolling used in connection with aircraft formerly manufactured by Fokker Aircraft B.V." (*Id.*, art. 1.1 (emphasis added).) Under that agreement, FSBV is to "make price and schedule quotations available to FSI for spare parts and services required by FSI in connection with this Agreement." (*Id.*, art. 2.1). "FSI undertakes to adhere to such quotations, unless otherwise agreed by [FSBV]." (*Id.*) Interestingly, the same individual (Mr. Hamers) signed the agreement as "President" for both companies.[8]

In light of this agreement, there can be no reasonable dispute over whether or not FSI was functioning as the agent for FSBV in providing and marketing aircraft support services in North America. In any event, the other evidence in the record firmly supports this conclusion. Onno Rijskijk, the in-house lawyer on many of the affidavits in this case, testified that FSI "was created by

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[6] This is the "only business agreement" between FSI and FSBV. *See* Rijsdijk Depo. at p. 197.

[7] All excerpts and relevant exhibits to the deposition of Onno Rijsdijk are attached as Exhibit B to the Declaration of Lisa R. Kamrath filed concurrently herewith. The complete original transcript, along with exhibits, will be lodged with the court at least five days before the hearing, as required by Orange County Local Rules.

[8] The agreement does say that "[e]ach of the Parties herein shall act as an independent legal entity and not as an agent for, partner of, or joint venture with the other Party hereto." (art. 10.2). This provision can only mean that FSI is not FSBV's "agent" for purposes other than sale of aircraft parts and maintenance services, for otherwise the agreement would be a nullity.

Fokker Services B.V. to support . . . [s]ale of parts and services in the United States." *See* Rijsdijk Depo. at pp. 54-55. Or as FSI's sales manager put it, FSI is FSBV's "sales and logistical center for North America." *See* Kouters Depo. at p.31.

In addition, FSI and FSBV have a common financial administrator (Rijsdijk), a common sales promotion effort (Alsemgeest), and FSBV does all FSI's procurement. Thus, marketing brochures prepared for these entities refer to "Fokker Services" without distinguishing between FSBV or FSI. (*e.g.*, Exhibit 64 to Rijsdijk Depo.). Fokker's in-house lawyer admits that "Fokker Services" in this context can only refer to FSBV and its subsidiaries, FSI and Fokker Services Singapore. *See* Rijsdijk Depo. at pp. 214-15; accord, *see also* Kouters Depo. at p. 158. As noted, moreover, in the July Memorandum, the Internet site and press releases for Fokker Services B.V. refers to Fokker Services having *locations* in the Netherlands, Atlanta, and Singapore. *See* FSI Supplemental Amended Response to First Amended Set of Requests for Admissions Nos. 34-35.[9] Likewise, a single English-language marketing video was prepared for both FSBV and FSI, and only refers to "Fokker Services," making no effort to distinguish FSBV from FSI. *See* Exhibits 8-9 to Rijsdijk Depo.; *see also* Rijsdijk Depo. at pp. 64-66. The marketing manager for FSBV, Theo Alsemgeest, explained that this wording was used: "From a marketing standpoint the customer is interested in a one door shopping reality and that's Fokker Ser-

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[9] Attached as Exhibit D to the Declaration of Lisa R. Kamrath filed concurrently herewith.

vices, whether it's B.V. or Inc. or whatever." *See* Deposition of Theo Alsemgeest at p.28.[10]

FSBV is in strict control of the marketing efforts by it and its subsidiary. Mr. Kouters, the sales manager for FSI, testified that FSI reported to the FSBV Vice President for marketing. *See* Kouters Depo. at pp. 90-91. He further testified that FSI has "limited" input in the FSBV prepared sales materials used by FSI, at most accepting "suggestions" made by FSI. *See* Kouters Depo. at pp. 156, 151. Indeed, FSI could not even place a magazine advertisement without obtaining FSBV's approval. *See* Alsemgeest Depo. at p. 51. This testimony is corroborated by FSI's mission statement in the Customer Support Guide, which states: "Fokker Services Inc. in Atlanta is the dedicated services organization of Fokker Services in the Netherlands for North America. . . . Fokker Services Inc. reports directly to the Vice President Marketing & Sales and Vice President Logistical Services of Fokker Services B.V. in the Netherlands, which secures you a high level of support." *See* Exhibit 44 to Rijsdijk Depo. (Doc. Bates No. FSI 200 within Ex. 44).

As was contemplated by the Business Agreement, the prices charged by FSI are determined by FSBV. *See* FSI Supplemental Amended Response to First Amended Set of Special Interrogatories, Nos. 31-32[11]; *see also* Kouters Depo. at p. 91. FSI also uses FSBV's computer system for controlling parts inventory (the Spare Parts Inventory

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[10] All excerpts and relevant exhibits to the deposition of Theo Alsemgeest are attached as Exhibit C to the Declaration of Lisa R. Kamrath filed concurrently herewith. The complete original transcript, along with exhibits, will be lodged with the court at least five days before the hearing, as required by Orange County Local Rules.

[11] Attached as Exhibit E to the Declaration of Lisa R. Kamrath filed concurrently herewith.

Network ("SPIN")) and FSBV's computer system controlling repair and warranty work.[12] See FSI Supplemental Amended Response to First Amended Set of Requests for Admissions No. 22.[13]; *see also* Rijsdijk Depo. at p. 184. Moreover, FSI is not allowed to purchase aircraft parts from outside vendors. Instead, FSBV maintains its own employee permanently residing in Atlanta and maintaining an office at FSI in Atlanta, Abe March, to procure components from North American vendors. *See* Kouters Depo. at pp. 66-68; *see also* Rijsdijk Depo. at pp. 75-76; *see also* Alsemgeest Depo. at p. 11. FSI does not have its own lawyers but rather relies on FSBV's lawyers for legal services. *See* Rijsdijk Depo. at p. 156. Finally, FSI's budget must be approved by FSBV. *See* Kouters Depo. at p. 189. Not surprisingly perhaps, the same person, C. Th. de Jongh, is manager of finance, for both companies. *See* FSBV Supplemental Amended Response to First Amended No. 16; see also FSBV Supplemental Amended Response to First Amended Set of Requests for Admissions No. 8.[14]

It can hardly be surprising that FSI functions as FSBV's agent, or "office" or "location," for North America. North America was one of the largest markets for Fokker aircraft. Unless FSBV was going to abandon product support for Fokker aircraft, it had to have a presence in the United States. It could either use its own employees or a closely controlled agent. FSBV chose to

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12 Moreover, Elizabeth Perry, a FSBV employee in the Netherlands, who was Customer Desk Manager, even signed correspondence on behalf of "Fokker Services, Inc." (*See* Exhibit 14 to Kouters Depo.)

13 Attached as Exhibit D to the Declaration of Lisa R. Kamrath filed concurrently herewith.

14 Attached as Exhibit F to the Declaration of Lisa R. Kamrath filed concurrently herewith.

employ a wholly-owned subsidiary to act as its agent for the United States. As demonstrated in the preceding section, that agent, FSI, engaged in substantial systematic contacts with this State sufficient to support the exercise of general jurisdiction over it. As a result, the Court may also exercise general jurisdiction over FSBV.

This is not some novel conclusion. As noted in the July Memorandum, courts have repeatedly found general jurisdiction over aircraft manufacturers that have employed closely held subsidiaries as sales agents in the forum state. *See e.g.*, *Jones v. Beech Aircraft Corp.*, 995 S.W.2d 767 (Tex. Court. App. 1999). The same conclusion applies here.

BUSINESS AGREEMENT

This Agreement (hereinafter referred to as "Agreement") is made and executed as of the ___th day of the _____, 199__, by and between:

Fokker Services, Inc., a Virginia corporation, having its principal office at 5169 Southridge Parkway, Suite 100, Atlanta, GA 30349 (hereinafter referred to as "FSI")

Fokker Services, B.V., a Netherlands corporation, having its principal office at Amsterdam, The Netherlands (hereinafter referred to as "Fokker"):

WHEREAS

1. Fokker is engaged, since 15th March 1996, in the business of marketing and sale of aircraft spare parts and of providing product support and any other services for Fokker F27, F28, Fokker 50, Fokker 70 and Fokker 100 aircraft worldwide, apart from the United States of America and Canada; and
2. FSI is willing to act as sales agent for Fokker in the United States of America and Canada.

NOW THEREFORE

The parties hereto now wish to enter into an agreement, containing the principles and general terms and conditions governing their business relationship and have agreed as follows:

ARTICLE 1: SUBJECT MATTER OF THE AGREEMENT

1. FSI agrees to act as sales agent of Fokker for, among other things, the sale within The United States and Canada (hereinafter referred to as the

"Territory") of aircraft spare parts and tooling used in connection with aircraft formerly manufactured by Fokker Aircraft B.V.

2. So as to enable FSI to swiftly deliver spare parts, Fokker agrees to make available to FSI a consignment stock of aircraft spare parts and tooling at no cost to FSI, provided:

   a) FSI keeps and preserves this stock in a warehouse acceptable to Fokker;

   b) FSI maintains accurate books and records relating to, among other things, sales of aircraft spare parts and tooling to customers and purchases of spares from Fokker after receipt of a customer order;

   c) FSI keeps accurate records with respect to the inventory of spares and tooling on hand from time to time in the Atlanta facility;

   d) FSI processes warranty claims and repair requests by customers; and

   e) FSI provides such other services as are ancillary to the services described herein.

3. In order to enable FSI to provide the services to Fokker described herein, Fokker will sell aircraft spare parts and tooling and any other product support, goods or services for an amount equal to 90% of the price payable by each of the FSI customers pursuant to their respective General Terms Agreements (hereinafter referred to as "GTA"). All such sales shall be ex-works (as defined in the current edition of "Incoterms" published by The International Chamber of Commerce) the Atlanta facility.

4. Nothing in this Agreement shall be construed or interpreted as conferring upon FSI any exclusive right to market and sell spare parts and to provide services in the Territory. Neither does this Agreement confer authority upon FSI to act on behalf of Fokker or to bind or commit Fokker to any third party in any way.

5. In case Fokker decides to perform activities as mentioned in paragraph 1 of this Article in the Territory or to conclude an agreement concerning activities similar to those covered by this Agreement with any other party, FSI shall be advised thereof by Fokker.

ARTICLE 2: FOKKER QUOTATIONS AND ORDERING PROCEDURE

1. Upon FSI's request, Fokker shall make price and schedule quotations available to FSI for spare parts and services required by FSI in connection with this Agreement. These quotations shall be valid for a period of sixty (60) days after the date of issue, unless otherwise stipulated in the relevant quotation.

   FSI undertakes to adhere to such quotations, unless otherwise agreed upon by Fokker.

   The Fokker quotations shall be based on Fokker's General Terms and Conditions for Aircraft Support Services, if relating to services;

2. The prices quoted by Fokker to FSI shall be compatible with the prices quoted by Fokker in similar cases outside the Territory.

ARTICLE 3: MUTUAL INFORMATION

1. It is deemed to be in the interest of both Parties hereto that the FSI business covered by this Agreement is conducted in approximately the same manner as the Fokker business. Accordingly and also pursuant to Article 2, paragraph 1, Fokker shall provide FSI with the following information:

   a) Indications of standard prices applied by Fokker throughout the world for the spare parts and related services. It is expressly agreed that these price indications shall not be considered as conclusive for the prices to be quoted by FSI to customers or to be paid by FSI to Fokker in any particular case.

   b) The General Terms and Conditions for Aircraft Support Services ("GTC") used by Fokker in respect of services rendered by Fokker.

   c) Any other standard agreements or standard letter agreement forms used by Fokker.

   d) Standard proposal forms used by Fokker.

   e) At FSI's request, any other information, which FSI may reasonably require to conduct its business pursuant to this Agreement. This undertaking shall not, however, be construed or interpreted as an obligation on the part of Fokker to provide such further information to FSI, if Fokker is of the opinion that it cannot comply with FSI's request, in view of Fokker's commercial or business interests or because Fokker is not free to disclose the information to others.

2. On its part, FSI shall provide all information to Fokker as available to FSI or which Fokker may

reasonably require to anticipate and meet present and future market demands from the Territory.

ARTICLE 4: PAYMENT/BAD DEBT RISK

1. Provided Fokker has previously approved GTA's to be concluded between FSI and its customers, and provided FSI will at least monthly advise Fokker of the volume and composition of its debtors, Fokker will bear the risk that customers of FSI fail to pay for any good or service provided to them.

2. Amounts received by FSI under contracts concluded by FSI with customers, to the extent relating to aircraft spare parts and/or services ordered by FSI from Fokker according to Article 2 hereof, shall be remitted to Fokker's account at a bank to be designated by Fokker.

3. FSI shall be responsible for invoicing. To the extent such invoicing is delegated to Fokker, FSI invoice forms provided by FSI to Fokker will be used. Copies of such invoices shall be sent to FSI, which shall be deemed to be invoices from Fokker to FSI for the payments due to Fokker according to paragraph 2 of this Article.

   FSI shall be responsible for any follow-up required towards the customers in case payments are overdue. At FSI's request, Fokker will assist in collecting overdue payments (e.g. in the case of a dispute or if a customer becomes insolvent).

4. All services rendered by Fokker personnel to FSI, or by FSI personnel to Fokker shall be for the account of the party rendering such services unless otherwise agreed upon by the Parties hereto (e.g. in case the services rendered or to be rendered are to be

considered as falling beyond the scope of this Agreement).

5. In the event that any spare part is returned by a customer as not confirming to an order, FSI shall return the spare part to the inventory in its facility and resell such part to Fokker at the price paid by FSI.

ARTICLE 5: LIABILITIES AND INSURANCE

1. FSI shall be named as an additional insured in the following Fokker policies, at no cost to FSI:

   a) Fokker's Aviation Products Legal Liability insurance.

   b) Fokker's General Third Party Legal Liability insurance.

2. It is expressly agreed between the Parties hereto that Fokker's liability towards FSI in respect of aircraft spare parts delivered and services provided by Fokker, pursuant to orders received from FSI, shall be limited to the following:

   a) Settlement by Fokker, at no cost to FSI, of warranty claims; and

   b) Settlement by Fokker, at no cost to FSI, of any other claims received by FSI and covered by the insurance mentioned in paragraph 1 of this Article;

   provided that FSI shall without delay pass any such claims to Fokker and upon Fokker's request assist Fokker and provide Fokker with any or all information as Fokker may require to settle such claims.

FSI shall refrain from admitting any liabilities or assuming any obligations or costs and cooperate fully with Fokker to reduce damages and liabilities.

3. Fokker shall release and defend, indemnify and hold harmless FSI and FSI's employees from and against all liabilities, claims, damages, losses, costs and expenses, of whatsoever kind and nature and howsoever caused, arising in connection with any injury or death of Fokker-employees and any loss of or damage to property of Fokker-employees, as a result of the implementation of this Agreement.

   FSI shall release and defend, indemnify and hold harmless Fokker and Fokker's employees from and against all liabilities, claims, damages, losses, costs and expenses, of whatsoever kind and nature and howsoever caused, arising in connection with any injury or death of FSI-employees and any loss of or damage to property of FSI-employees, as a result of the implementation of this Agreement.

4. The Parties hereto agree that this Article has been the subject of discussion and negotiation and is fully understood by the Parties hereto, and that the terms and conditions in the Agreement were arrived at in consideration of the provisions of this Article including the limitation of Fokker's liability as set forth in paragraph 2 of this Article.

ARTICLE 6: FOKKER PERSONNEL ASSISTANCE TO FSI

It is acknowledged and agreed that Fokker personnel will from time to time assist and advise FSI in conducting its business as covered by this Agreement. It is understood that they will not enter into agreements on

behalf of FSI or bind or commit FSI towards third parties, unless authorized by FSI.

ARTICLE 7: GUARANTEES

In the event that a customer requires Fokker to give a guarantee with respect to any sale under a GTA, the terms and conditions thereof shall be negotiated and determined by the Parties hereto in mutual agreement. In case Fokker is requested to perform under such guarantee, the party to which the relevant non-performance towards customers is attributable shall be liable towards the other party for the consequences thereof.

ARTICLE 8: PRODUCT SUPPORT

Fokker undertakes to enable and assist FSI in providing spare parts, product support and any other services as may be required by FSI in connection with orders placed by customers to FSI for the operation of aircraft in the Territory.

It is the intention of the Parties hereto to have and maintain a spare parts depot in the Territory. Agreements to be entered into with third parties for that purpose by Fokker and/or FSI and all organizational and financial matters relating to such depot shall be the subject of mutual consultation and agreement between the Parties hereto.

ARTICLE 9: DELIVERY PROCEDURE

FSI shall be responsible for filing the Bills of Sale with the appropriate authorities in the Territory in order to effect the transfer of title of the aircraft spare parts from Fokker to FSI and from FSI to its customer respectively.

ARTICLE 10: MISCELLANEOUS

1. Nothing in this Agreement shall preclude either Party from conducting other activities, including selling to or buying from other parties.

2. Each of the Parties hereto shall act as an independent legal entity and not as an agent for, partner of, or joint venture with the other Party hereto.

ARTICLE 11: EFFECTIVE DATE, AMENDMENT AND TERMINATION OF THE AGREEMENT

1. This Agreement becomes effective on the date of signing by both Parties hereto.

2. This Agreement shall not be amended except by written instrument which shall be signed by the authorized representatives of the Parties hereto.

3. Except for the right of termination on account or default, either Party shall at any time have the right to terminate this Agreement by giving written notice of termination to the other party, at least 90 (ninety) days prior to the date of termination stated in the notice.

   Such notice of termination shall terminate all rights and obligations of the Parties hereto, except that orders issued by FSI and accepted by Fokker pursuant to Article 2 hereof and Annex A hereto shall remain valid until all rights and obligations arising therefrom shall have been fulfilled.

ARTICLE 12: APPLICABLE LAW AND FORUM

This Agreement and subsequent agreements arising therefrom in connection therewith shall be governed by

the laws of The Netherlands, the courts of which shall be the sole forum for any proceedings hereunder.

FOKKER SERVICES, INC.

By: /s/ Hamers
Title: President

FOKKER SERVICES, INC.

By: /s/ Hamers
Title: President

BUSINESS AGREEMENT

This Agreement (hereinafter referred to as "Agreement") is made and executed as of January 1, 1999, and is by and between:

Fokker Services, Inc., a Virginia corporation, having its principal office at 5169 Southridge Parkway, Suite 100, Atlanta, Georgia 30349 (hereinafter referred to as "FSI")

and

Fokker Services, B.V., a Netherlands corporation, having its principal office in Amsterdam, The Netherlands (hereinafter referred to as "Fokker"):

WHEREAS

1. Fokker is engaged, since 15th of March 1996, in the business of marketing and sale of aircraft spare parts and of providing product support and other services for Fokker F27, Fokker F28, Fokker 50, Fokker 70, and Fokker 100 aircraft worldwide, apart from the United States of America and Canada; and

2. FSI is willing to act as sales agent for Fokker in North, Middle and South America.

NOW THEREFORE

The parties hereto now wish to enter into an agreement, containing the principles and general terms and conditions governing their business relationship and have agreed as follows:

ARTICLE 1: SUBJECT MATTER OF THE AGREEMENT

1. FSI agrees to act as sales agent of Fokker for, among other things, the sale within North, Middle and South America (hereinafter referred to as "Territory") of aircraft spare parts, tooling, component maintenance, technical services and aircraft maintenance services, used in connection with aircraft formerly manufactured by Fokker Aircraft, B.V.

2. So as to enable FSI to swiftly deliver aircraft spare parts, tooling, component maintenance, technical services, and aircraft maintenance services, Fokker agrees to make available to FSI a consignment stock of aircraft spare parts and tooling at no cost to FSI, provided:

   a. FSI keeps and preserves this stock in a warehouse acceptable to Fokker;

   b. FSI maintains accurate books and records relating to, among other things, sales of aircraft spare parts, tooling, component maintenance, technical services and aircraft maintenance services to customers and purchases of aircraft spare parts and tooling from Fokker after receipt of customer orders;

   c. FSI keeps accurate records with respect to the inventory of aircraft spare parts and tooling on hand from time to time in the Atlanta facility;

   d. FSI processes warranty claims and repair request by customers; and

   e. FSI provides such other services as are ancillary to the services described herein.

3. In order to enable FSI to provide the services to Fokker described herein, Fokker will sell aircraft spare parts, tooling, component maintenance, technical services, and aircraft maintenance services, and any other product support, goods or services for an amount equal to 95% of the price payable by each of the FSI customers pursuant to their respective General Terms Agreement (hereinafter referred to as "GTA"). All such sales shall be ex-works (as defined in the current edition of "Incoterms" published by The International Chamber of Commerce) the Atlanta facility.

4. Nothing in this Agreement shall be construed or interpreted as conferring upon FSI any exclusive right to market and sell aircraft spare parts and tooling and to provide services in the Territory. This Agreement does not confer authority upon FSI to act on behalf of Fokker or to bind or commit Fokker to any third party in any way.

5. Fokker shall promptly advise FSI of all cases which Fokker decides to perform activities as mentioned in paragraph 1 of this Article 1 in the Territory or to conclude an agreement concerning activities similar to those covered by this Agreement with any other party.

ARTICLE 2: FOKKER QUOTATIONS AND ORDERING PROCEDURE

1. Upon FSI's request, Fokker shall make price and schedule quotations available to FSI for aircraft spare parts, tooling, component maintenance, technical services and aircraft maintenance services, and any other services required by FSI in connection with this Agreement. These quotations shall be valid

for a period of sixty (60) days after the date of issue, unless otherwise stipulated in the relevant quotation.

FSI undertakes to adhere to such quotations, unless otherwise agreed upon by Fokker.

Fokker quotations shall be based on Fokker's General Terms and Conditions for Aircraft Support Services, if relating to services;

2. The prices quoted by Fokker to FSI shall be compatible with the prices quoted by Fokker in similar cases outside the Territory.

ARTICLE 3: MUTUAL INFORMATION

1. It is deemed to be in the interest of both parties hereto that the FSI business covered by this Agreement is conducted in approximately the same manner as the Fokker business. Accordingly and also pursuant to Article 2, paragraph 1, Fokker shall provide FSI with the following information:

   a. Indications of standard prices applied by Fokker throughout the world for the spare aircraft parts and tooling and related services. It is expressly agreed that these price indications shall not be considered as conclusive for the prices to be quoted by FSI to customers or to be paid by FSI to Fokker in any particular case.

   b. The General Terms and Conditions for Aircraft Support Services ("GTC") used by Fokker in respect of services rendered by Fokker.

   c. Any other standard agreements or standard letter agreement forms used by Fokker.

   d. Standard proposal forms used by Fokker.

e. At FSI's request, any other information, that FSI may reasonably require to conduct its business pursuant to this Agreement. This undertaking shall not, however, be construed or interpreted as an obligation on the part of Fokker to provide such further information to FSI, if Fokker is of the opinion that it cannot comply with FSI's request, in view of Fokker's commercial or business interests or because Fokker is not free to disclose the information to others.

2. On its part, FSI shall provide all information to Fokker as available to FSI or which Fokker may reasonable require to anticipate and meet present and future market demands from the Territory.

ARTICLE 4: PAYMENT/BAD DEBT RISK

1. Provided Fokker has previously approved GTA's to be concluded between FSI and its customers, and provided FSI will at least monthly advise Fokker of the volume and composition of its debtors, Fokker will bear the risk that customers of FSI fail to pay for any good or service provided to them.

2. Amounts received by FSI under contracts concluded by FSI with customers, to the extent relating to aircraft spare parts and/or services ordered by FSI from Fokker according to Article 2 hereof, shall be remitted to Fokker's account at a bank to be designated by Fokker.

3. FSI shall be responsible for invoicing. To the extent such invoicing is delegated to Fokker, FSI invoice forms provided by FSI to Fokker will be used. Copies of such invoices shall be sent to FSI, which shall be deemed to be invoices from Fokker to FSI

for payments due to Fokker according to paragraph 2 of this Article.

FSI shall be responsible for any follow-up required towards the customers in case payments are overdue. At FSI's request, Fokker will assist in collecting overdue payments (e.g. in the case of a dispute or if a customer becomes insolvent).

4. All services rendered by Fokker personnel to FSI, or by FSI personnel to Fokker shall be for the account of the party rendering such services unless otherwise agreed upon by the Parties hereto (e.g. in case the services rendered or to be rendered are to be considered as falling beyond the scope of this Agreement).

5. In the event that any spare part is returned by a customer as not confirming to an order, FSI shall return the spare part to the inventory in its facility and resell such part to Fokker at the price paid by FSI.

ARTICLE 5: LIABILITIES AND INSURANCE

1. FSI shall be named as an additional insured in the following Fokker policies, at no cost to FSI:

   a. Fokker's Aviation Products Legal Liability insurance.

   b. Fokker's General Third Party Legal Liability insurance.

2. It is expressly agreed between the Parties hereto that Fokker's liability towards FSI in respect of aircraft spare parts delivered and services provided by Fokker, pursuant to orders received from FSI, shall be limited to the following:

a. Settlement by Fokker, at no cost to FSI, of warranty claims; and

b. Settlement by Fokker, at no cost to FSI, of any other claims received by FSI and covered by the insurance mentioned in paragraph 1 of this Article 5;

provided that FSI shall without delay pass any such claims to Fokker and upon Fokker's request assist Fokker and provide Fokker with any or all information as Fokker may require to settle such claims.

FSI shall refrain from admitting any liabilities or assuming any obligations or costs and cooperate fully with Fokker to reduce damages and liabilities.

3. Fokker shall release and defend, indemnify and hold harmless FSI and FSI's employees from and against all liabilities, claims, damages, losses, costs and expenses, of whatsoever kind and nature and howsoever caused, arising in connection with any injury or death of Fokker-employees and any loss of or damage to property of Fokker-employees, as a result of the implementation of this Agreement.

FSI shall release and defend, indemnify and hold harmless Fokker and Fokker's employees from and against all liabilities, claims, damages, losses, costs and expenses, whatsoever kind and nature and howsoever caused, arising in connection with any injury or death of FSI-employees and any loss of or damage to property of FSI-employees,, as a result of the implementation of this Agreement.

4. The Parties hereto agree that this Article 5 has been the subject of discussion and negotiation and is

fully understood by the parties hereto, and that the terms and conditions in the Agreement were arrived at in consideration of the provisions of this Article 5 including the limitation of Fokker's liability as set forth in paragraph 2 of this Article 5.

ARTICLE 6: FOKKER PERSONNEL ASSISTANCE TO FSI

It is acknowledged and agreed that Fokker personnel will from time to time assist and advise FSI in conducting its business as covered by this Agreement. It is understood that Fokker personnel will not enter into agreements on behalf of FSI or bind or commit FSI to third parties, unless authorized by FSI.

ARTICLE 7: GUARANTEES

In the event that a customer requires Fokker to give a guarantee with respect to any sale under a GTA, the terms and conditions thereof shall be negotiated and determined by the parties hereto in mutual agreement. In case Fokker is requested to perform under such guarantee, the party to which the relevant non-performance to customers is attributable shall be liable to the other party for the consequences thereof.

ARTICLE 8: PRODUCT SUPPORT

Fokker undertakes to enable and assist FSI in providing aircraft spare parts, product support and any other services as may be required by FSI in connection with orders placed by customers to FSI for the operation of aircraft in the Territory.

It is the intention of the parties hereto to have and maintain a aircraft spare parts depot in the Territory. Agree-

ments to be entered into with third parties for that purpose by Fokker and/or FSI and all organizational and financial matters relation to such depot shall be the subject of mutual consultation and agreement between the parties hereto.

ARTICLE 9: DELIVERY PROCEDURE

FSI shall be responsible for filing the Bills of Sale with the appropriate authorities in the Territory in order to effect the transfer of title of the aircraft spare parts from Fokker to FSI and from FSI to its customer respectively.

ARTICLE 10: MISCELLANEOUS

1. Nothing in this Agreement shall preclude either Party from conducting other activities, including selling to or buying from other parties.
2. Each of the Parties hereto shall act as an independent legal entity and not as an agent for, partner of, or joint venture with the other Party hereto.

ARTICLE 11: EFFECTIVE DATE, AMENDMENT AND TERMINATION OF THE AGREEMENT

1. This Agreement becomes effective on the date of signing by both parties hereto.
2. This Agreement shall not be amended except by written instrument which shall be signed by the authorized representatives of the parties hereto.
3. Except for the right of termination on account or default, either party shall at any time have the right to terminate this Agreement by giving written notice of termination to the other party, at least (ninety) 90

days prior to the date of termination stated in the notice.

Such notice of termination shall terminate all rights and obligations of the parties hereto, except that orders issued by FSI and accepted by Fokker pursuant to Article 2 hereof and Annex A hereto shall remain valid until all rights and obligations arising therefrom shall have been fulfilled.

ARTICLE 12: APPLICABLE LAW AND FORUM

This Agreement and subsequent agreements arising therefrom in connection therewith shall be governed by the laws of The Netherlands, and the courts of which shall be the sole forum for any proceedings hereunder.

FOKKER SERVICES, INC.

By: /s/ John Cyganic
Title: Managing Director

FOKKER SERVICES, B.V.

By: /s/ C. Th. De Jongh

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

Case No. 783900

LINDA ANDREWS, etc., et al.,

Plaintiffs,

—v.—

NORTHROP GRUMMAN CORPORATION, etc. et al.,

Defendants.

AND RELATED CROSS-COMPLAINT

[Relevant Excerpts]

VOLUME I

DEPOSITION OF ONNO RIJSDIJK

Transcript of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before Tab Prewett, a Registered Professional Reporter, a Certified Shorthand Reporter of the State of New Jersey, and Notary Public of the State of New Jersey, held at the offices of Mendes & Mount, Esqs., 750 Seventh Avenue, New York, New York, on Saturday, November 20, 1999, commencing at 9 a.m.

* * *

Fokker Services BV holds 100 percent of the stock in Fokker Services, Inc.?

A. That's correct.

Q. And does Fokker Services BV and Fokker Services, Inc., do they use any common administrative services? For example, do they use the same accounting, computer? Do they use the

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* * *

same marketing? Do they use the same human resources, or is there any commonality between those two companies in terms of their administrative usage?

A. Well, it's—Fokker Services, Inc., is an independent company. But for certain activities, they may call upon the assistance of Fokker Services BV. And that would primarily be in the field of marketing and sales, administrative and financial assistance. That's, I think, about it.

Q. Okay. And in those situations, Inc. would rely on BV or BV would rely on Inc.? or do they have a common, for example, marketing and sales force?

A. They don't have a common marketing and sales force. Fokker Services Inc. has its own marketing and sales manager, and he has got his associates. And Fokker Services BV has got its own marketing and sales personnel. But my understanding is that for certain bigger projects they will work together.

Q. As a joint venture?

A. No, as Fokker Services BV giving

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* * *

assistance to Fokker Services, Inc., in doing business with American customers.

Q. Does Fokker Services, Inc., ever give assistance to Fokker Services BV?

A. Could you be more specific on that?

Q. Sure. Is there any assistance in any of the areas that you have spoken about given to Fokker Services BV by Fokker Services, Inc.?

A. There is.

Q. So it's reciprocal?

A. It's reciprocal, not necessarily in the same—

Q. Volume?

A. Yep. Not in the same areas.

* * *

22 What is the extent of Fokker Services,
23 Inc.'s authority to act for Fokker Services BV
24 within the United States?
25 A. It does not have that authority.

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* * *

2 Q. And does Fokker Services have the
3 authority of—strike that.
4 Does Fokker Services BV have any
5 authority to act on behalf of Fokker Services,
6 Inc., other than in the North American market
7 area?
8 A. No, it does not.
9 Q. Well, in that case, if someone calls
10 and reaches Fokker BV requiring parts or service
11 in North America, Fokker Services BV would be
12 unable to take that order; is that correct?
13 A. Well, my understanding to act on behalf
14 of somebody is, like, you can legally bind that
15 person in his name. And they don't have that
16 authority, neither of them for each other.
17 Q. Okay. So you are using a strict legal
18 definition; is that right?
19 A. Well, my understanding of "acting on

behalf" under the Dutch concept of law.

Q. Okay. Well, if you can back up from Dutch law and, say, it would be true, would it not, that Fokker Services BV and Fokker Services, Inc., act together to satisfy customer needs in North America?

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* * *

A. Could you rephrase that? I'd like you to explain "acts together." That does not make sense to me.

Q. Sure. You have some customers in North America, right?

A. That's true. Fokker Services, Inc., has.

Q. Well, Fokker Services BV owns Fokker Services, Inc., and they have customers in North America, too; don't they? They act in North America through Fokker Services, Inc.?

That's a common line of questions. Objection to that question and sustained on the grounds it's compound, complex, and incomprehensible.

Fokker Services BV has created Fokker Services, Inc., to deal with customers in

North America?
A. That is true.

* * *

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* * *

A. My understanding is that Fokker Services, Inc., is responsible for its own marketing and sales activities in the United States.
Q. Okay. Let's suppose that we are going to put together a video, a presentation to assist the Fokker family, their sales in North America. Would Fokker Services, Inc., do that without the advice and consent of Fokker Services BV?
MS. WILSON: Object to the form of the question.
MR. GREEN: What part of the form?
MS. WILSON: It's assuming that they would put together a video on behalf of the other companies.
Q. Wait, wait. Let me straighten that question out if I can. Ms. Wilson will be happy with my questions.
Have you ever seen any marketing video that was put out on behalf of any of the Fokker

22 companies?
23 A. No, I have not.
24 Q. Do you know if one exists?
25 A. I know that one exists for

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* * *

2 Fokker Services BV and for Fokker Services, Inc.

* * *

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* * *

2 Q. Do I or do—so, actually, you are
3 telling me that you have four service desks?
4 A. Four?
5 Q. Yes, one in Singapore, one in Atlanta,
6 one in—
7 A. In Nieuw-Vennep.
8 Q. So three, I'm sorry. One in the
9 Netherlands?
10 A. That's my understanding. Yep.
11 Q. And is there any cross talk between
12 those service desks with regard to the
13 availability of parts and personnel to perform
14 services?
15 A. There is.
16 Q. How does that work?

A. If something is not available in, for instance, Atlanta, then the aircraft-on-the-ground employee will contact its colleague in Nieuw-Vennep to see whether the part is available in the stock in Nieuw-Vennep.

Q. And if that occurs, then there—I suppose, in your hypothetical situation—there is a part in Nieuw-Vennep, would it then be drop shipped by Nieuw-Vennep to the customer?

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* * *

A. That is correct.

Q. And invoiced through Inc.?

A. That is correct.

Q. And when the funds are paid to Inc. by the customer, to pay their bills, it then is through some financial mechanism credited to BV?

A. Fokker Services BV will send an invoice to Fokker Services, Inc., and charge them for the part. And Fokker Services, Inc., will charge the client for the part. Now, I'm not really familiar with this stream of funds, but, of course, consideration is paid for that part that comes out of Nieuw-Vennep.

Q. Would the same thing be true if

engineers or mechanics or technical people had to be dispatched to the aircraft to perform some service?

A. Same procedure would apply.

Q. So in other words, if I called Atlanta and there was not sufficient expertise there to deal with my problem, people would be dispatched from BV in Holland to go to, in my case, Sacramento, California to do the work required?

A. That's correct.

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* * *

Q. As a customer, would I know that these people worked for BV and not for Inc.? Do they have a sign that says "BV" or "Inc." on their jackets?

A. No. I don't know. It would probably say "Fokker Services."

Q. Well, in fact, Fokker services is used throughout to mean any of these facilities; isn't that right?

A. That would be my idea. Yes.

Q. So as a customer, all I know is I am dealing with Fokker Services. I don't know which Fokker Services entity it may be?

MS. WILSON: Object to the form of the question.

A. Well, I think—I don't think that's true, because you will have a contract with Fokker Services, Inc., as an American client; and you will be invoiced by Fokker Services, Inc. And before we do services or we send parts, there would be a contract.

* * *

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

Case No. 783900

LINDA ANDREWS, etc., *et al.*,

Plaintiffs,

—v.—

NORTHROP GRUMMAN CORPORATION, etc. *et al.*,

Defendants.

AND RELATED CROSS-COMPLAINT

[Relevant Excerpts]

DEPOSITION OF THEO ALSEMGEEST

TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before JOMANNA CASTANO, a Certified Shorthand Reporter and Notary Public of the State of New Jersey and the State of California, held at THE GOLDEN TULIP, in Bergen op Zoom, Netherlands, on Sunday, November 28, 1999, commencing at 11:30 in the morning.

* * *

Q. Sir, it's true, is it not, that Fokker Services Inc. is a sales agent in North America for Fokker Services BV?

A. Fokker Services is a separate entity doing business in the market segment U.S. It's actually more my customer.

Q. Are you telling me that that's a false statement or not a true statement that Fokker Services Inc. is engaged as agent, sales agent, for Fokker BV?

A. I do think that the word "agent" is not covering, actually, what Fokker Services Inc. is doing for us. Fokker Services Inc. is a specific entity. Fokker Services BV is doing business with Fokker Services Inc. customer-wise.

Q. Sir, referring to Mr. Rijsdijk's No. 60, it says:

"FSI is willing to act as a sales agent

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for Fokker in North America and South America."

Are you now telling me that Fokker Services Inc. is not the sales agent for Fokker in North America?

A. As I stated before, it's written in

this document. I have never seen this document before. I saw it this morning for the first time.

Q. Without regard for that document, are you telling me that Fokker Services Inc. is not the sales agent for Fokker?

A. I don't know exactly what you mean by "sales agent" as written here in this document. I can see that.

My explanation is that Fokker Services Inc. is, in my sense of the word, a customer of Fokker Services BV, and Fokker Services Inc. is its own entity which is providing services to the Fokker operators in this segment of the market.

Q. So, it is your statement here under oath today that Fokker Services Inc. is not the sales agent for Fokker Services BV in North America?

A. Can you phrase to me what you mean by "sales agent"?

Q. Sir, let's take it the other way

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around. Why don't you tell me in your parlance and industry what a sales agent is? What does that term me to you?

A. In my terminology, an agent is acting

for the company as a whole, could be not just focused to a certain segment in the market; whereas, Fokker Services Inc. is dedicated to a specific segment in the market, and I wouldn't call it a sales agent.

Q. Can Fokker Services Inc. bind Fokker Services BV for sales in North America?

A. Excuse me?

Q. Can Fokker Services Inc. bind Fokker Services BV in North American sales?

A. Can you explain the word "bind" to me?

Q. Can they make sales on behalf of Fokker Services BV in North America?

A. They are making sales on behalf of Fokker Services Inc.

Q. Can they make sales on behalf of Fokker Services BV in North America?

A. No, because that's not the arrangement that we made with Fokker Services Inc.

Q. Then would any Fokker Services BV employee have the right to sign documents or

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correspondence on behalf of Fokker Services Inc.?

A. No.

* * *

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Frank A. Silane (State Bar No. 90940)
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Attorneys for Cross-Defendant
FOKKER SERVICES B.V.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

Case No. 783900

LINDA ANDREWS, individually and as Representative of the Estate of David Andrews, deceased, et al.,

Plaintiffs,

—vs.—

NORTHROP GRUMMAN CORPORATION, TELEFLEX CONTROL SYSTEMS INCORPORATED, and DOES 1 through 10, Inclusive,

Defendants.

NORTHROP GRUMMAN CORPORATION,

Cross-Complainant,

—vs.—

FOKKER AVIATION B.V.; FOKKER SERVICES B.V.: FOKKER AERO-STRUCTURES B.V.; FOKKER ELMO

B.V.; FOKKER SPECIAL PRODUCTS B.V.; FOKKER DEFENSE MARKETING; and ROES 1 through 100, inclusive,

Cross-Defendants.

DATE: July 23, 1999

TIME: 8:00 a.m.

PLACE: Courtroom of the Honorable William F. McDonald

Assigned for All Purposes to the Honorable William F. McDonald

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DECLARATION OF ONNO RIJSDIJK IN SUPPORT OF MOTION OF FOKKER SERVICES B.V. TO QUASH SERVICE OF SUMMONS AND CROSS-COMPLAINT

DECLARATION OF ONNO RIJSDIJK

I, Onno Rijsdijk, declare and state as follows:

1. I am an attorney with the Corporate Legal department of Stork N.V., and have been appointed to assist FOKKER SERVICES B.V. in legal matters. I have been employed by Stork N.V. since October 1, 1997.

2. In connection with the execution of this declaration, I have been provided with copies of Northrop

Grumman Corporation's Cross-Complaint for Declaratory Relief for Contribution, Declaratory Relief for Equitable Indemnity and Equitable Indemnity and the underlying Complaint on file with the Clerk of the Court, and have read and am familiar with their contents. The equitable indemnity action filed by Northrop Grumman Corporation arises out of the October 31, 1996, crash of Flight No. 402, operated by Transportes Aeros Regionais S.A. (hereinafter "TAM"), a domestic Brazilian airline, en route from Sao Paolo to Rio de Janeiro, Brazil. This declaration is based upon my personal knowledge, my investigation, information supplied by employees of FOKKER SERVICES B.V. and the records maintained by FOKKER SERVICES B.V.

3. FOKKER SERVICES B.V. is a Dutch corporation with its statutory seat in Amsterdam, The Netherlands. FOKKER SERVICES B.V. has its registered offices in Hoogerheide, The Netherlands. FOKKER SERVICES B.V. was incorporated as Fokker ServicesII B.V. on February 23, 1996 in the capacity of a holding company. Its name was changed into FOKKER SERVICES B.V. on June 23, 1996 whereupon it became the new type certificate holder of certain Fokker type aircraft. In this connection it has had contacts with the offices of the Federal Aviation Administration of the United States in Brussels, Belgium (the central European FAA office) and in Renton, Washington (Northwest Mountain region). FOKKER SERVICES B.V. began providing aircraft repair, modification and overhaul activities in November 1996, but not in California nor on behalf of any customers based in California. These aircraft repair, modification and overhaul activities were in the past performed by Fokker Aircraft Services B.V. which merged with FOKKER SERVICES B.V.. Fokker Aircraft Services B.V. never provided said services in California nor on behalf of any customers based in California either.

4. FOKKER SERVICES B.V. never had leased or owned real property in the State of California..

5. FOKKER SERVICES B.V. never has possessed a license, charter or permit which has been issued by the State of California or by any country, municipality or local government in California..

6. FOKKER SERVICES B.V. never appointed the Secretary of State or any other person to act as its agent for service of process in the State of California.

7. FOKKER SERVICES B.V. never maintained any bank accounts, manufacturing or sales facilities, or any other place of business in the State of California..

8. FOKKER SERVICES B.V. has never paid, nor has been required to pay, any taxes to the State of California.

9. FOKKER SERVICES has never employed individuals who work or reside in the State of California.

10. FOKKER SERVICES B.V. has never maintained any telephone listings in the State of California.

11. FOKKER SERVICES B.V. has never engaged in any advertising or sales efforts specifically directed to prospective customers in the State of California and has never derived substantial revenue from goods sold or services rendered in the State of California.

12. FOKKER SERVICES B.V. did not participate in the solicitation, sale or lease of the accident aircraft to TAM.

13. FOKKER SERVICES B.V. did not advertise the accident aircraft or any other Fokker aircraft in the State of California.

14. FOKKER SERVICES B.V. has never provided product support in the State of California.

15. The accident aircraft was designed and manufactured by Fokker Aircraft B.V., which was adjudicated bankrupt by the court of Amsterdam, The Netherlands in March 1996. The accident aircraft was delivered to TAM in August 1993 by Fokker Aircraft B.V.. Fokker Aircraft B.V. was the initial type certificate holder of the Fokker type aircraft and in this connection has had certain contacts with the FAA branch office in Long Beach, California though the type certificates were formally issued by FAA Northwest Mountain Region. The decision to utilize its resources in Long Beach, California was solely for the account of the FAA. FOKKER SERVICES B.V. purposefully availed itself of the Brussels, Belgium office of the FAA to obtain the type certificates issued by the FAA Northwest Mountain Region.

16. FOKKER SERVICES B.V. did not exist at the time the accident aircraft was designed and manufactured, nor did it exist when the accident aircraft was delivered to TAM.

17. Neither FOKKER SERVICES B.V. nor Fokker Aircraft Services B.V. has ever regularly conducted or solicited business in California or derived substantial revenue from good sold or services rendered in California.

18. FOKKER SERVICES B.V. was not involved in the design, maintenance or manufacture of the accident aircraft.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 2nd day of June, 1999, at Amsterdam, The Netherlands.

/s/ ONNO RIJSDIJK
ONNO RIJSDIJK

[Excerpts From]

10 February 1999

ELEVENTH PUBLIC REPORT OF THE BANKRUPTCY TRUSTEES PURSUANT TO SECTION 73A NETHERLANDS BANKRUPTCY ACT

In the bankruptcies declared by Amsterdam District Court on 15 March 1996 of:

– N.V. Koninklijke Nederlandse Vliegtuigenfabriek Fokker of Amsterdam (Fokker N.V.)

Bankruptcy number 96.0117

Bankruptcy trustees: Mr A.L. Leuftink (Van Benthem en Keulen, Utrecht) and Mr R.J. Graaf Schimmelpenninck (Boekel de Neree, Amsterdam)

– Fokker Administration B.V. of Amsterdam (FAD)

Bankruptcy number 96.0121

Bankruptcy trustees: Mr B.F.M. Knüppe (AKD Prinsen, Rotterdam), Mr A.L. Leuftink and Mr R.J. Graaf Schimmelpenninck

– Fokker Aircraft B.V. of Amsterdam (FAC)

Bankruptcy number 96.0119

Bankruptcy trustees: Mr A..A..M. Deterink (Banning Van Kemenade & Holland, Eindhoven) and Mr A.L. Leuftink

The judge appointed in all the above bankruptcies is Mr M.P.P.M. van Vonderen of Amsterdam District Court.

* * *

6.3 Northrop-Grumman

On 12 January 1999 Northrop-Grumman (see section 5) informed the bankruptcy trustees that a writ had been issued against Northrop-Grumman by interested parties, relatives of the victims of the TAM accident, that it is disputing liability and that it takes the view that, if it is liable, FAC should compensate the loss. FAC is disputing this as there is no contractual obligation to do so. In the event that both Northrop-Grumman and FAC are liable, claims may arise between Northrop-Grumman and FAC by way of recourse. Northrop-Grumman is submitting a claim provisionally estimated at USD 500 million, claiming it is a priority right under s. 287 of Book 3 of the Netherlands Civil Code. Northrop-Grumman also announced that it will be objecting to the next distribution list.

Fokker's aviation liability insurance covers possible loss suffered by FAC both on account of claims by interested parties on grounds of wrongful act and on account of certain contractual claims of, for example, suppliers. The bankruptcy trustees expect that Fokker's insurers will confirm this to Northrop-Grumman, in which case Northrop-Grumman will probably maintain its conditional claim but not require a reservation at a subsequent distribution.

* * *

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Attorneys for Cross-Defendant
FOKKER SERVICES B.V.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

Case No. 783900
TRIAL DATE: OCTOBER 2, 2000

LINDA ANDREWS, individually and as Representative of the Estate of David Andrews, deceased, et al.,

Plaintiffs,

—VS.—

NORTHROP GRUMMAN CORPORATION, TELEFLEX CONTROL SYSTEMS INCORPORATED, and DOES 1 through 10, Inclusive,

Defendants.

NORTHROP GRUMMAN CORPORATION,

Cross-Complainant,

—VS.—

FOKKER AVIATION B.V.; FOKKER SERVICES B.V.: FOKKER AERO-STRUCTURES B.V.; FOKKER ELMO B.V.; FOKKER SPECIAL PRODUCTS B.V.; FOKKER DEFENSE MARKETING; and ROES 1 through 100, inclusive,

Cross-Defendants.

DATE: March 1, 2000

TIME: 1:30 p.m.

PLACE: Courtroom of the Honorable William F. McDonald

Assigned for All Purposes to the Honorable William F. McDonald

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NOTICE OF RULING ON DEMURRER OF FOKKER AIRCRAFT B.V.

The demurrer of FOKKER AIRCRAFT B.V came on regularly before this Court on March 1, 2000, at 1:30 p.m., the Honorable William F. McDonald presiding.

After consideration of all the evidence and exhibits, as well as arguments of counsel and all other matters presented to the Court, the demurrer was sustained without leave to amend and without prejudice to proceeding in the Netherlands.

DATED: April 20, 2000

CONDON & FORSYTH LLP

By: /s/ KEVIN R. SUTHERLAND
Frank A. Silane
Kevin R. Sutherland
—and—

Diane Westwood Wilson
Laura Ann McGinn
Joanna L. Geraghty

Attorneys for Cross-Defendants
FOKKER AIRCRAFT B.V.

Company Profile

Mission Statement
Certificates and approvals

Organization

Fokker Services provides operators, of almost 1200 Fokker aircraft worldwide, with a complete support and service package. As holder of the Type Certificates, the company is responsible for maintaining the airworthiness of all types of Fokker aircraft. However, Fokker Services also has the skills to service other commercial and military aircraft types.

Locations

Fokker Services has locations in Woensdrecht, Nieuw-Vennep and Schiphol (the Netherlands), Singapore and Atlanta (USA).

How to reach Fokker Services in Woensdrecht

Key Personnel

Mr. Max J. Wieringa	President
Mr. K.C. van der Giessen	Vice President Technical Services
Mr. J.A.M. de Bruijn	Vice President Aircraft Services
Mr. R.C. Nowee	Vice President Logistic Services
Mr. M. Trevino	Vice President Marketing & Sales

http://www.fokkerservices.com/overview/companyprofile/comp0001.htm 7/14/99

Mr. C. Th. de Jongh	Director Finance
Mr. J.F. Lemstra	Director Personnel & Organization
Mr. J.T. Dammer	Director Quality Assurance
Mr. N.W.J. Scholte	Communications Manager

Capabilities & Capacity

Commercial and Military aircraft maintenance, overhaul, repair, and modification

Fixed Wing	: Fokker F27, Fokker F28, Fokker 50, Fokker 60, Fokker 70, Fokker 100, Boeing 737, F16 series
Rotary Wing	: Westlake Lynx (SH14D), Sikorsky (S-61, S-76), Boeing Chinook (CH046D)
Maritime Conversions	: Fokker F27, Fokker 50
Cargo Conversions	: All narrow body aircraft
VIP/Corporate Refitting	: All narrow body aircraft
Interior refurbishment	: All narrow body aircraft
Avionics upgrading	: All narrow body aircraft
APU installation	: Fokker F27, Fokker 50
Moving Belt Load. Sys.	: Fokker F28, Fokker 100
Stripping/painting/Sealing	: All narrow body aircraft, F16, helicopters
Non Destructive Testing:	: Civil a/c, military a/c, helicopters

Calibration	: Tooling, equipment, components
Personnel	: 600 total, 400 technical
Hangars	: Five hangars totalling 16,000 m2 20 military and 16 commercial a/c at one time
Locations	: Woensdrecht, the Netherlands; Singapore 00666

Component Maintenance, overhaul, repair and modification

In-house	: Computers & Displays, Communication & Navigation equipment, Gyro's & Compasses, Indicators & Flight Instruments, Hydraulics, Fuel, Pneumatics, Structures, Wheel, Tyres, Brakes, Electrical Power, Landing Gear, Lights, Upholstery, Survival Equipment, Panels.
Parts Production	: Computer numeric controlled machining, boring, and milling shop, sheet metal processing shop production
Laboratory Research	: Material research on strength and hardness, oil and fuel analyses
Special Processes	: Non Destructive Testing, heat treatment, surface teratments, stripping and painting

Personnel	: 130 employees
Locations	: Schiphol & Woensdrecht, the Netherlands

Material Support

Spare parts provisioning	: Proprietary parts, Vendor parts, Mod. kits, Tooling
Logistic support	: Around the clock logistic support and AOG service
Abacus	: Parts lease and forward exchange service
SPEC 2000	: Fast communication and order processing
Personnel	: 100 employees
Locations	: Nieuw-Vennep, the Netherlands; Atlanta, USA

Technical Services

Aircraft support	: Engineering and Operational support; all Fokker a/c
Documentation	: Maintenance and Operational documentation services
Product improvement	: Product development and improve-ments
Military Support	: Maintenance Engineering/ Technical Publications
Field Service Support	: On-site Technical Representation
Training	: Type—and Maintenance Training

Personnel	: 240 employees
Locations	: Nieuw-Vennep & Woensdrecht, the Netherlands

Approvals

Authorizations:	RLD, JAA - JAR 145 ref: RLD-1174, FAA - FAR 145 ref.: NQ1Y357K, CAA, DGAC, Type Certificate Holder of Fokker aircraft
Qualifications:	ISO 9001, AQAP 110

Addresses

[PHOTO]

Fokker Services B.V.
Woensdrecht facilities
P.O. box 3
4630 AA Hoogerheide
The Netherlands

Fokker Services B.V.
P.O. box 75047
1117 ZN Schiphol
The Netherlands

[PHOTO]

[PHOTO]

Fokker Services B.V.
P.O. Box 231
2150 AE Nieuw Vennep
The Netherlands

Fokker Services Asia Pte. Ltd.
Building 139, Piccadilly
East Camp, Seletar Airport
Singapore 798378

[PHOTO]

[PHOTO]

Fokker Services Inc.
5169 Southridge Parkway
Suite 100
Atlanta, GA 30349
U.S.A.

LIST OF FEDERAL DISTRICT COURT CASES THAT HAVE BEEN CONSIDERING WHEN TO IMPUTE THE CONTACTS OF A SUBSIDIARY TO A PARENT FOR PURPOSES OF CONFERRING JURISDICTION OVER THE PARENT

1. *American Eyewear, Inc. v. Peeper's Sunglasses & Accessories, Inc.*, No. CIV.A.3:99CV1657-D, 2000 WL 637085 (N.D. Tex. May 16, 2000)
2. *In re Cardizem CD Antitrust Litig.*, 105 F. Supp. 2d 618 (E.D. Mich. 2000)
3. *Aerotel, Ltd. v. Sprint Corp.*, 100 F. Supp. 2d 189 (S.D.N.Y. 2000)
4. *Cotracom Commodity Trading AG v. Seaboard Corp.*, 94 F. Supp. 2d 1189 (D. Kan. 2000)
5. *In re Vitamins Antitrust Litig.*, 94 F. Supp. 2d 26 (D.D.C. 2000)
6. *Nutrition Physiology Corp. v. Enviros Ltd.*, 87 F. Supp. 2d 648 (N.D. Tex. 2000)
7. *Ugalde v. Dyncorp, Inc.*, No. 98CIV.5459WHP, 2000 WL 217502 (S.D.N.Y. Feb. 23, 2000)
8. *LaSalle Nat'l Bank v. Vitro, Sociedad Anonima*, 85 F. Supp. 2d 857 (N.D. Ill. 2000)
9. *Central States Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp.*, No. 99 C 2524, 2000 WL 1015937 (N.D. Ill. Jan. 31, 2000)
10. *Dewhurst v. Telenor Invest AS*, 83 F. Supp. 2d 577 (D. Md. 2000)

11. *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, No. 99CIV.4548(AKH), 1999 WL 1116832 (S.D.N.Y. Nov. 30, 1999)

12. *Kirkpatrick v. Rays Group*, 71 F. Supp. 2d 204 (W.D.N.Y. 1999)

13. *Blue Ribbon Pet Prods., Inc. v. Rolf C. Hagen (USA) Corp.*, 66 F. Supp. 2d 454 (E.D.N.Y. 1999)

14. *Weiss v. La Suisse*, 69 F. Supp. 2d 449 (S.D.N.Y. 1999)

15. *E.S.I., Inc. v. Coastal Corp.*, 61 F. Supp. 2d 35 (S.D.N.Y. 1999)

16. *Carson v. Maersk, Ltd.*, 61 F. Supp. 2d 607 (S.D. Tex. 1999)

17. *Poteau v. Walt Disney World Co.*, No. CIV.A99-CV-843, 1999 WL 619646 (E.D. Pa. Aug. 16, 1999)

18. *Bradley v. Mayo Found.*, No.CIV.A.97-204, 1999 WL 1032806 (E.D. Ky. Aug. 10, 1999)

19. *Reiss v. GAN S.A.*, 78 F. Supp. 2d 147 (S.D.N.Y. 1999)

20. *Northeastern Power Co. v. Balcke-Durr, Inc.*, 49 F. Supp. 2d 783 (E.D. Pa. 1999)

21. *Jesco Const. Corp. v. Nationsbank Corp.*, No.CIV.A.98-1657, 1999 WL 246709 (E.D. La. Apr. 23, 1999)

22. *Androphy v. Smith & Nephew, Inc.*, 31 F. Supp. 2d 620 (N.D. Ill. 1999)

23. *Insolia v. Philip Morris Inc.*, 31 F. Supp. 2d 660 (W.D. Wis. 1998)

24. *Gruca v. Alpha Theraputic Corp.*, 19 F. Supp. 2d 862 (N.D. Ill. 1998)

25. *Cabot Safety Intermediate Corp. v. Akron Safety Equip., Inc.*, 12 F. Supp. 2d 180 (D. Mass. 1998)

26. *Continental Ins. Co. v. Loewen Group, Inc.*, No.96CV1427, 1998 WL 142380 (N.D. Ill. Mar. 17, 1998)

27. *Langlois v. Deja Vu, Inc.*, 984 F. Supp. 1327 (W.D.Wash. 1997)

28. *Avery Dennison Corp. v. UCB SA*, No. 95C6351, 1997 WL 441313 (N.D. Ill. July 30, 1997)

29. *Arch v. American Tobacco Co.*, 984 F. Supp. 830 (E.D. Pa. 1997)

30. *Wesleyan Pension Fund, Inc. v. First Albany Corp.*, 964 F. Supp. 1255 (S.D. Ind. 1997)

31. *Davidson v. Time Warner, Inc.*, No. CIV.A.V-94-006, 1997 WL 405907 (S.D. Tex. Mar. 31,1997)

32. *Pyramyd Stone Int'l Corp. v. Crossman Corp.*, No. 95 Civ. 6665(JFK), 1997 WL 66778 (S.D.N.Y. Feb. 18, 1997)

33. *In re Telectronics Pacing Sys., Inc.*, 953 F. Supp. 909 (S.D. Ohio 1997)

34. *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54 (D.D.C. 1996)

35. *Giuliano v. Nations Title, Inc.*, 938 F. Supp. 78 (D. Mass. 1996), *aff'd*, 134 F.3d 361 (1st Cir. 1998)

36. *Lindy Invs., L.P. v. Shakertown Corp.*, No. CIV.A.94-4112, 1996 WL 497191 (E.D. La. Aug. 30, 1996)

37. *Naxos Resources, (U.S.A.) Ltd. v. Southam Inc.*, No. CV 96-2314 WJR (MCX) , 1996 WL 662451 (C.D. Cal. Aug. 16, 1996)

38. *Perry v. Household Retail Servs., Inc.*, 953 F. Supp. 1378 (M.D. Ala. 1996)

39. *Leo v. Kerr-McGee*, CIV.A.NO.93-1107(JEI), 1996 WL 254054 (D.N.J. May 10, 1996)

40. *Boley v. Commercial Carriers, Inc.*, No. 4:94-CV-2298 CAS, 1996 WL 118280 (E.D. Mo. Feb. 23, 1996)

41. *Northlake Cardiology Assoc's v. Alpha Gulf Coast, Inc.*, Civ.A. No. 95-2511, 1995 WL 739865 (E.D. La. Dec. 11, 1995)

42. *Dunn v. A/S Em. Z. Svitzer*, 885 F. Supp. 980 (S.D. Tex. 1995)

43. *Moore v. St. Paul Cos*, Civ. A. No. 94-1329, 1995 WL 11187 (D.N.J. Jan. 3, 1995)